THE JURIST

Volume XII OCTOBER, 1952 No. 4

In Memoriam

RIGHT REVEREND MONSIGNOR HUBERT LOUIS MOTRY

(1884-1952)

Registration days for the returning students of the School of Canon Law at The Catholic University of America were marked with an air of sadness because of the absence of one whom death had called just before the oral examinations began in the Spring. In the corridors of Caldwell Hall the students missed this year the greeting of the beloved Monsignor Motry who, as Dean for thirteen years and as Faculty member for twenty-nine years had, at the beginning of each scholastic year, welcomed with his cordial smile the priest students commencing or resuming their studies in canon law.

But those who had been privileged to attend the Requiem Mass celebrated for the repose of his soul in the Shrine of the Immaculate Conception on the twenty-first of May were comforted in their recollection of the great number of mourners who filled the crypt on that occasion and of the tribute their presence paid to the invaluable services rendered by Monsignor Motry to men, women, and children in all walks of life. Bishops, prelates, Faculty colleagues, soldiers, children had come to unite in one single act of love for and gratitute to one whose selfless charity had won their admiration and esteem.

There was no mistaking the temper of those thus assembled to pay respectful meed to their departed friend. They were honoring a priest of God who had bound them in friendship to his great generous heart through his loyalty to the noblest traditions of his calling. Even that he was a learned man was important only because he had placed his learning in a magnanimous sacrificial act at the disposal of his priesthood for the spiritual comfort of his fellowman and for the promotion of the Kingdom of God on earth.

So the students returning to the School of Canon Law this year, in spite of the sense of loss that registration days must emphasize, are heartened by the thought that the spirit of their departed Dean hovers over the School that engrossed so much of his zealous care through almost half his entire life and they are once more imbued, as in years gone by, with his overwhelming reverence for the priesthood and with the value, for the fulfillment of their vocation, of the studies they are about to undertake.

In that mood, they, as all the beneficiaries of Monsignor Motry's fruitful career, breathe a prayer that the eternal reward promised the good and faithful servant may speak the message of gratitude that they desire perpetually to record.

CHURCH AND STATE IN AUSTRIA

Facts and Problems

EARLY in 1948, shortly after his return to Austria, the present writer had a conversation with a leading prelate of the Catholic Church. The prelate asked us what we thought of the present position of the Church in Austria? The reason for the question was quite obvious. We had been away for ten years and it was possible that changes might be more apparent to us than to one who had lived here all the intervening time. Nevertheless we were unable to give an accurate answer. We had to admit that we did not know whether it was the end of an old or the beginning of a new period. Whereupon the prelate replied that this was just the answer he was expecting: This is what is seething within us, the feeling that we live in a period of transition. We cannot yet detach ourselves completely from the past, while we do not yet know which is the way for the future. In the course of the conversation he analyzed the claims of the "old-timers" within the Church who advocated a complete restoration of the pre-occupation status, and of the radical "pioneers" who, refusing to accept anything from the past, were looking for an entirely new concept of the Church's position in Austria. The conversation had a wide range which also included the particular problems of Church-State relations in the restored Austrian Republic.

We recall this conversation here in order to characterize one of the burning questions now confronting the Catholic Church in Austria. Incidentally it is also one of the major problems —although not to the same extent—occupying the attention of the leading Lutheran and Helvetic Protestant Churches in Austria. The Church-State relations of the Catholic Church are a historic problem. From medieval times the State had great influence in ecclesiastical affairs. Josephinism is only

the better known type of it, but it was based on much older claims. Already in the 14th century Rudolph IV, the first duke who called himself archduke, is reported to have summed up his ecclesiastical policy by saying: "In my provinces I wish to be Pope, Metropolitan, Bishop and Dean." The dynasty supported and favored the Church, but it also considered her a highly important instrument of State policy. The Catholic Church was the established Church, other denominations gaining restricted freedom only since Joseph II's policy of toleration, a policy that was widened in the second half of the 19th century. The dynasty was the patron of the majority of the benefices, including episcopal sees. Joseph II quasi-secularized a considerable amount of Church property, establishing the so-called Funds of Religion (*Religionsfonds*) which remained State-controlled Church property under a complicated administration system. The ruler nominated almost all candidates for episcopal sees and all incumbents of public patronage benefices. A whole system of State ecclesiastical laws regulated an extensive part of the life of the Church.[1] The liberalism of the 19th century, although proclaiming freedom of religion and of conscience, did not do much to change the situation. On the contrary, by pursuing the policy of separation of Church and State, it only tried to secularize the attitude of the State toward the Church, because up to then the policy of the State had still been conscious of the religious task of the Church, while liberalism was no longer interested in it.

Such was the situation when the first Austrian Republic was founded in 1918. It did not fundamentally affect the existing status. The legal relations of Church and State remained much the same. The State continued to pay a considerable part of the salaries of the clergy. It contributed to the support of seminaries, church buildings, monasteries, etc. In-

[1] The term "State ecclesiastical law" (*Staatskirchenrecht*) characteristically is an invention of the Austrian legal language; cf. Höslinger, R., "Das Kultuswesen in der Zeit von 1867-1948," *Festschrift "100 Jahre Unterrichtsministerium"* (1949), 427 ff.

stead of the monarchical ruler, the Federal Government or the various land governors nominated the incumbents of the public patronate benefices, etc. The establishment of a new parish had to be approved by the State if payments from the Funds of Religion were expected (which was the regular case). The fiscal procurator of the State represented the Church in most of the civil court actions. Only the appointment of bishops became definitely an ecclesiastical affair, since Pope Benedict XV, owing to major political changes, had declared abolished all privileges or concessions once granted by the Apostolic See.[2] Politically the Church was even in a better position, since the Christian Social Party had gained control of the government. This party was also instrumental for maintaining the marriage law of the Austrian Civil Code. Although a civil law, the marriage law was denominational with special provisions for Catholics, Protestants and Jews. The Catholic provisions more or less corresponded to the Tridentine law, not to the CIC.

In the late twenties attempts were made to conclude a concordat with Rome. They were supported primarily by a small liberal coalition party. Particularly Dr. Schober, a former Police President of Vienna and originally non-partisan, favored the idea. When he became Federal Chancellor, supported by the Christian Social Party, he initiated parleys with the Apostolic See. When Dollfuss came to power, he continued these parleys. The concordat was signed on June 5, 1933, and promulgated under the new constitution of the "Christian Corporate State" on May 1, 1934. It meant remarkable success for the Church in Austria and a strong increase of her power and influence; however it did not mean any definite change in Church and State relations. The idea, advanced by some, that the concordat meant the end of "Josephinism" (i.e. of State influence in Church matters) in Austria was highly exaggerated. On the contrary, the "Christian State" considered it as its duty to make the Church an essential ele-

[2] *AAS*, XIII (1921), 521-524.

ment of its policy, to the growing concern of some of her responsible leaders.

The German occupation of Austria in 1938 brought the first fundamental change in the centuries-old tendencies of Church and State relations. It would go too far afield to describe it here in detail. The concordat was not recognized, nor were the provisions of the Reich concordat extended to Austria. Austria was German territory without a concordat.[3] The "Greater German Marriage Law" replaced the Austrian provisions.[4] The Funds of Religion were abolished and their properties formally nationalized. At the same time all public patronates were abolished, all payments to the Church (salaries, building funds, etc.) were stopped, the teaching of religion in public schools was gradually eliminated, Catholic schools were closed, church properties were seized, monasteries were expropriated, convents were suppressed, etc. Thus Church and State relations, by way of legal and illegal actions were completely altered.

However, in spite of the fact that all these legal, illegal or political measures were intended to be detrimental to the Church, some of them had salutary effects, too. The same law which abolished State financial support to the Church gave the Catholic Church and some of the denominations the right to levy church contributions (*Kirchenbeiträge*) on the membership.[5] They were not taxes but they remained State-controlled. It was thought that Catholics who, as a rule, had in the past not been required to pay church dues would not do

[3] Weber, W., "Neues Staatskirchenrecht in der Ostmark und im Sudetenlande," *Zeitschrift der Akademie für Deutsches Recht* (1939), 450 ff.; Plöchl, W. M., "Reflections on the Nature and Status of Concordats," THE JURIST, VII (1947), 10 ff.

[4] Gesetz vom 6. Juli 1938, RGBl I S. 807, zur Vereinheitlichung des Rechtes der Eheschliessung und der Ehescheidung im Lande Österreich und im übrigen Reichsgebiet.

[5] Gesetz über die Einhebung von Kirchenbeiträgen im Lande Österreich, GBlLÖ, No. 543/1939.

it now. It was a miscalculation by the Nazis. Actually Catholics paid their dues to such an extent that the Church was in a better position than before. Consequently the establishment of new parishes no longer required the financial consent of the State. Thus, unless political pressure was exercised in particular cases the Church was not prevented from erecting new parishes. And she made ample use of this opportunity. In many cases convent churches or public oratories were changed into parish churches, not only for the purpose of caring for souls, but also to protect these buildings from seizure by the German authorities, because they usually did not lay hands on parish churches. Similarly the bishops gained much wider freedom regarding the appointment of priests to benefices since the public patronate was abolished and the State no longer presented candidates for them. Of course it should not be overlooked that the weight of the evils of the German measures was nevertheless much heavier than the benefit which the Church experienced.[6] The Church was not only separated from but also persecuted by the State.

When Austria was liberated in April 1945, the "Second Republic", as it is called, restored the republican Federal Constitution of 1920 as amended in 1929, thus eliminating the Constitution of 1934 of the corporate state. Therefore, after December 19, 1945, when the newly elected parliament convened for the first time and elected the Federal President, the democratic constitution of the First Republic was once again in operation. Formally it also meant that those constitutional provisions—incidentally partly dating back to the Monarchy—which guarantee freedom of religion and of conscience, came into force again.[7] The Catholic Church was again one

[6] Fried, J., *Nationalsozialismus und katholische Kirche in Österreich,* 1947; Lásló, St., "Das Werden und Wachsen der Apostolischen Administratur Burgenland," *Österreichisches Archiv für Kirchenrecht* (hereafter *ÖAKR*), I (1950), 195 ff.; Rudolf, K., *Aufbau im Widerstand,* 1947; Wechner, B., "Die Apostolische Administratur Innsbruck-Feldkirch," *ÖAKR,* III (1952), 69 ff.

[7] Staatsgrundgesetz über die allgemeinen Rechte der Staatsbürger vom 21. Dezember 1867, Art. 14, 15 und 16.—Staatsvertrag von St.-Germain, Art. 63, 66 und 67.

of the so-called " legally recognized denominational societies " (*gesetzlich anerkannte Religionsgesellschaften*) like some of the Christian denominations and the Jews. But did it mean that the wheel of history was turned back and that the Church-State relations were re-enacted, if not as of 1938, at least as of 1934, the year the republican form of government was replaced by the corporate state? The answer was " No ", although nobody could—or would—say what changes had actually taken place. As in the entire life of Austria, so in Church-State relations no *restitutio in integrum* had taken place.

It would go beyond the scope of this paper to give an extensive analysis of the major tasks of the Austrian government and of the tremendous obstacles it had to meet and, as far as possible, to overcome: Military occupation with vague and undefined powers, complete economic breakdown, famine, etc. It also explains—although only in part—why the Church was slow and hesitant in re-adjusting her position toward the State. During the first seven months (May-November 1945) the powers of the Provisional Government which preceded the first freely elected Federal Government were very small and depended for all practical means on the good will and policy of the four occupying military governments in their respective zones. In practice, the provisional government in Vienna, surrounded by the Russian zone of occupation, had almost no means of communication with the land and local governments in the other three zones. The first provisional laws were applicable in the western zones of the American, British and French military authorities only with their approval. Many of these provisional laws were not approved in one or the other zone. The legal situation was almost impossible.

The Church on the other hand, no longer under the pressure of the Nazi State, was faced with a tremendous religious, pastoral and charitable task to which she dedicated herself with a rejuvenating zeal. However, just as the various lands of the Austrian Republic had almost no communication with

each other and with the provisional government, the Bishops had no opportunities of contact or of joint meetings. The provisional government in Vienna was in the same position with regard to contacts with Church authorities. Its sole practical ties were more or less only with Cardinal Innitzer, the Archbishop of Vienna. The Cardinal in turn was reluctant to make definite arrangements with the provisional government without consulting the other Bishops.

Then came the establishment of the definite Federal Government in December 1945. Although it was recognized by the Occupying Powers, its sovereignty still remained restricted. The military occupation continued—and continues until today. In 1946 hopes were still high that the State Treaty would soon be signed, granting Austria the long promised complete independence and ending the occupation. It caused a tendency on both sides, Church and State, to wait for this event and postpone the settlement of the new relations of Church and State. There were leading Catholics as well as politicians who looked critically at this wait-and-see-policy. It is still too early to render judgment on this policy. The fact only has to be pointed out that owing to this attitude, adopted by both sides, all major questions remained unsettled.

Eventually in 1948 the policy of this intermission period began to change. The hope for an early settlement in the matter of the State Treaty diminished. At the same time difficulties arose which caused the Church to abandon its policy of waiting. A variety of problems called for a more definite stand. It would be impossible to analyze in detail the entire situation, but to survey the major facts and problems will probably suffice to demonstrate the characteristics of the present status of Church and State relations in Austria. To sum up, the facts and problems of major concern are: The concordat of June 5, 1933, marriage, education, finances and Church property. In all these cases not only is it a fact that the Church is highly interested, but the problems are also po-

litical matters dividing the two parties forming the present Federal Government, the People's Party and the Socialist Party.

The case of the *Austrian Concordat* is more or less the center of the entire problem. It stands against the political background of the corporate state, a form of government totally opposed by the Socialists who were suppressed as a party during that period, a period that was no less controversial in a political sense for even the non-socialist groups in the Austrian parliament. Thus, the concordat is "tainted" with a political regime of the past whose legislation was, as far as possible, abandoned by the "Second Republic". This is one of the reasons why the government has so far not taken a definite step answering the question whether or not it considered the concordat still in force and binding. On the other hand the Vatican has let it be known that it regards the concordat as a binding international treaty, obliging both parties to it. There is no doubt, though, that the Vatican would not oppose certain practical changes, if they would not mean a weakening of the position of the Church in Austria.

The legal problem of the validity of the concordat is based on the government's policy accepted by the parliament that the status of the German regime in Austria between 1938 and 1945 was that of an *occupation* and not of an annexation. This position has been steadfastly maintained by the government, even in spite of the fact that the Allies have been sometimes unclear in their own expressions and statements.[8] The case was ably explained in favor of the occupation theory by Austria's foremost and internationally known professor of international law, Dr. Alfred Verdross.[9] Of course, when the Austrian parliament approved the government's policy in 1945 regarding the status of occupation it was not done in view of the concordat. The question whether or not Austria was oc-

[8] Verosta, St., *Die internationale Stellung Österreichs,* 1947.

[9] Verdross, A., "Die völkerrechtliche Identität von Staaten," *Juristische Blätter,* 1950, 18 ff.

cupied or annexed has far-reaching international consequences. An annexation destroys the identity and sovereignty of a state. An occupation, however, only diminishes or makes ineffective the sovereignty of a state on a temporary basis. Consequently annexation also means—again as a rule—the cessation of international treaties owing to the elimination of one contracting party. In the case of occupation, international treaty obligations can be suspended only on a temporary basis. Thus the policy adopted by the Austrian government means that the occupation did not destroy the identity of Austria, and the "Second Republic" is not a new state but the continuation of the republic as founded in 1918. Consequently the government is in favor of honoring treaty obligations prior to March 1938, the time of the beginning of the German occupation. It must be added that this attitude is accepted by the majority of the States having international engagements with Austria dating back to the pre-war period.

There was no controversy about this problem in Austria until 1950 when Dr. Schärf, Vice-Chancellor and chairman of the Socialist Party, unexpectedly advocated the annexation theory with the admitted purpose of eliminating the concordat from the Austrian international treaty obligations.[10] An ensuing lively discussion, partly learned, partly political, followed.[11] While the government as a whole did not change its policy and continued in practice to accept the "occupation theory" with all its consequences, it maintained silence with regard to the validity of the concordat. In practice a rather strange situation arose which still continues: Those ministeries which are mainly concerned with the concordat, i.e., the Federal Chancellery, the Foreign Office and the Federal Ministry of Education which are headed by People's Party cabinet members, uphold the validity of the concordat, while the Fed-

[10] Schärf, A., "Gilt das Konkordat?" *Die Zukunft*, 1950, 117 ff.

[11] Von besonderer Seite, "Gilt das Konkordat? War der 'Anschluss' Annexion oder Okkupation?" *Österreichische Monatshefte*, 1950, 195 ff.; Plöchl, W. M., "Okkupation, Annexion und Konkordat," *Die Österreichische Furche*, 1950, Nr. 14, 4.

eral Ministry of Interior, headed by a Socialist Minister, does not recognize the concordat, and the Federal Ministry of Justice, also headed by a Socialist, adopts an opportunist policy without committing itself in either direction.

However, there are not only political considerations but also legal obstacles which stand in the way of the practical application of the concordat. They also prevent the return of pre-war Church-State relations in Austria. These obstacles go even beyond the provisions of the concordat and fundamentally affect the Austrian legal system. They are the many German laws which were put in force between 1938-1945 and not yet or only in part repealed or replaced with old or new Austrian laws by the " Second Republic ". It is a problem which still affects the entire legal system and is felt particularly in the " cultural field " of Church matters and education. The government is pledged to eliminate as far as possible the German legal system and to replace it with pre-war Austrian or new laws. It is—this has to be admitted—a complicated and tedious task. A good deal has been accomplished meanwhile in various fields, but slow progress has been made in matters interesting the Church owing to the aforementioned political implications.

Such is the case of the civil marriage law at present in force in Austria. On August 1, 1938 an " Act concerning the unification of the law of marriage and divorce in Austria and the other territories of the Reich " was introduced in Austria by the Germans, establishing obligatory civil marriage and excluding any (civilly) binding force from ecclesiastical law concerning marriage and from decisions of ecclesiastical courts. This and subsequent laws completely eliminated the old Austrian system. As said before the Austrian marriage law prior to the concordat fundamentally recognized denominational claims. Thus, although a secular law, it was different for Catholics, Protestants and Jews. The Austrian system recognized the authority of denominational officials to accept the marriage consent with binding force for the secular sphere, if

such officials were duly authorized by their denominations and if these denominations were "legally recognized denominational societies". Civil marriage existed only for cases in which the respective denominational official refused to accept the marriage consent or in which the parties did not belong to one of the legally recognized denominations. The only exception was the Burgenland, a land established after the State Treaty of St. Germain (1922), which continued to impose obligatory civil marriage according to Hungarian law. The concordat brought no fundamental change to this situation as far as the celebration of marriage was concerned, but introduced the CIC as civilly binding for divorce procedure and recognized the decisions of the ecclesiastical courts (including the Sacred Rota Romana) also in the secular sphere.[12] All this was abolished by the new German Marriage Law.

During the first few months of the "Second Republic" a chaotic situation existed. In many Austrian towns and cities the civil marriage officers had disappeared—a good many of them were political fugitives. In other places they ceased to function. Denominational marriages were celebrated again as before the war. In the Western part of Austria the German Marriage Law was practically ignored. Nevertheless it continued in force. The provisional government eliminated some of the racial and specific Nazi provisions[13] but it retained obligatory civil marriage and civil divorce. A secular "*sanatio in radice*" was introduced with a special act, recognizing all marriages performed between April 1 and June 29, 1945, by denominational officers or unauthorized civil agents.[14] Since this law was either not known or not applied in Western Austria for some months, much hardship arose as a result. Moreover, the German provisions remained in force. After June 29, 1945, marriages had to be performed in the presence of civil officers in order to be valid in the secular field.

[12] Köstler, R., *Das österreichische Konkordatscherecht*, 1937.

[13] For instructive details see Köstler, R., *Österreichs Eherecht*, 4. ed., 1948.

[14] Köstler, R., *l.c.*, 6 and 113 f.

Moreover, not only the provisions of obligatory civil marriage continued, but also the penal sanction against their violation. Section 67 of the Legal Status Act [15] which was also introduced in Austria by the Germans, provides that whoever performs the religious ceremony of a marriage prior to the contracting of the marriage before the civil officer shall be fined or punished with imprisonment. The only exception is the mortal illness of one of the marital parties.[16] It has been argued that this provision is a violation of the guaranties of religious freedom under the Austrian Federal Constitution; [17] nevertheless it was applied in several cases against Catholic priests,[18] and—so far only in one case—upheld by the Austrian Supreme Court.[19]

The fact that penal sanctions were applied against Catholic priests caused considerable concern not only to the Church but also to the general public. The call for elimination of the penal sanction was also voiced in the parliament and widely debated.[20] A most important step was taken by the Bishops' Conference. It denounced the present status of the marriage law in general and the penal provisions in particular. It abolished an emergency statute of 1938 which directed the clergy to avoid assisting at the marriage ceremony in anticipation of the civil marriage in order to prevent greater damage to the interests of the Church.[21] The Bishops' Conference went even

[15] 3. Personenstandsgesetz vom 3. November 1937; Köstler, R., *l.c.*, 104.

[16] The provisions of the German Reich Konkordat (20 julii 1933, *AAS*, XXV [1933], 389 ff.), still applicable in the Bonn Republic, somewhat mitigate the harsh provisions; Eichmann-Mörsdorf, *Lehrbuch des Kirchenrechts*, 6. ed., 1950, 142.

[17] Höslinger, R., "Öffentliche Ordnung und kirchliche Trauung," *Juristische Blätter*, Vol. 69 (1947), 376 f.; Plöchl, W. M., "Konkubinat, Gewissensehe, Zwangszivilehe, Religionsfreiheit," *ÖAKR*, I (1950), 10 ff.

[18] F.e. Plöchl, W. M., "Ein Urteil gemäss § 67 PStG," *ÖAKR*, I (1950), 90 ff.

[19] 21. September 1950. Plöchl, W. M., "Die Peripetie des österreichischen Eherechts," *ÖAKR*, II (1951), 47 ff.

[20] Plöchl, W. M., "Die Peripetie des österreichischen Eherechts," *ÖAKR*, II (1951), 47 ff.

[21] "Weisung an den hochw. Klerus hinsichtlich der obligatorischen Zivilehe," *Wiener Diözesanblatt*, Nr. 7, July 18, 1938, Vol. 76, 65.

a step further by proclaiming that in the future in all cases in which the civil authorities might refuse the performance of the civil marriage ceremony by virtue of the secular law, the ordinaries reserved the right to review each case and permit the celebration of the ecclesiastical marriage ceremony regardless of the civil law whenever it might seem necessary.[22] The spokesmen of the Bishops made it clear they would not hesitate to officiate in person and to go to jail if sentenced. This strong stand had several consequences. The civil authorities anxiously avoided such a test case. Another consequence was the inauguration of contacts between the Government and the Church to sound out the possibilities of amendments to the present marriage law. The Socialists, first adamant against any change, began to realize that they could not continue with their defence of a German law which remained unpopular and in contrast to the Austrian way of life. The example of the United States where both religious and civil marriage are equally recognized by the State was an important argument in the continuing discussion. Although no settlement has been reached at the time this paper is written, several draft bills—albeit still insufficient—have been signs of attempts to come to a solution. These draft bills indicate that the marriage law question will not be tabled till a workable solution has been found.

Of course any change of the present marriage law situation should not be restricted to the question of freedom to choose ecclesiastical or civil marriage with equal resultant rights in the secular field. The high civil divorce rate is a danger sign for society. The fact that—admittedly—the majority of civil divorce cases granted by the secular courts are based on untrue facts and statements accepted by them is another danger undermining the authority of the courts. The decisions of the ecclesiastical courts have no effect in the civil sphere. Here, too, the German provisions are continued in force. The only

[22] "Weisung der österreichischen Bischöfe über die Trauung," *ÖAKR*, II (1951), 97.

instance in which the concordat is still effective is art. VII, sect. 5: The ecclesiastical and civil courts continue to exchange information in pending divorce cases "within the frame of their respective jurisdiction".

The problem of *school* and *education* is similarly complicated. The Germans did away with the Austrian school system and the respective laws. This also meant the end of Catholic public and private schools and a serious restriction of religious education in the civil public schools. While the "Second Republic" did away with the Nazi education laws and with many other German laws, it has been slow in solving the school problem. What makes it even more complex is the fact that the civil public school system in present-day Austria lacks to a considerable extent the necessary legal foundation because the two government parties have not yet been able to agree on a solution and consequently the necessary bills have not yet been enacted. This is particularly the case with the public schools in the Burgenland where prior to 1938 the old Hungarian system, based on Hungarian law, continued to be operative, calling, as a rule, for denominational public schools, with non-denominational public schools as the exception. In 1945 a non-denominational public school system was inaugurated which up to the present lacks a solid legal foundation.

The restoration of Catholic schools was impeded in 1945 on two grounds. One of these was that many buildings had been seized by the Nazis and continued to be occupied by Allied or Austrian authorities. The other impediment was a legal one. The Communist Secretary of State for Education in the provisional government, Ernst Fischer, issued an ordinance on May 16, 1945, which forbade the establishment of new denominational schools. Only denominational private schools which enjoyed the rights of public schools on March 13, 1938, the day the Germans replaced the Austrian government, were permitted to reopen. Other restricting ordinances followed. The High Court of Administration, however, declared that these measures contravened the constitution (July 3, 1951) [23] and

[23] Höslinger, R., "Unterrichtsfreiheit und konfessionelle Privatschulen," *ÖAKR*, II (1951), 260 f.

forbade their further application. Since then new denominational private schools can be again freely established and they can obtain the rights of public schools if they meet the requirements.

Religious education is again obligatory in public schools, with the exception—and this is a new regulation, operative since 1945—that the parents or tutors or the children, if the latter have reached the age of fourteen, may state at the beginning of the scholastic year that they do not wish to attend religious education. It is noteworthy that in practice this is a negligible minority. The average does not reach more than 2% of the Austrian total. The teachers of religion in public schools are again paid by the State. However, no financial support is granted at present to the Catholic schools. This is a serious matter. The Church's attitude toward the school problem was restated in a joint encyclical of the Austrian Bishops issued at the beginning of the Lenten season 1952.

There are signs that the two government parties are now more inclined to resume talks leading toward a general solution of the school problem. The Church's stand can be summed up as follows: freedom of religious education in public schools, freedom of the parents to choose the kind of education they want for their children, freedom of Catholic schools and a solution of the question of financial aid for Catholic schools.

The third major problem concerns *Church finances and property.* The German law eliminating state financial contributions to the salaries of the clergy and administrative personnel, as well as to the maintenance of buildings, etc.[24] was continued by the "Second Republic". Similarly the nationalization of the Funds of Religion is still an unsettled legal problem.[25] Only a first step has been made toward the restoration of

[24] See footnote 5.

[25] Arnold, F., "Religionsfonds-Staatseigentum?" *Österreichische Furche,* 1950, Nr. 46, 3, and *Österreichische Furche,* 1951, Nr. 3, 2; Schärf, A., "Religionsfonds-Staatseigentum?" *Die Zukunft,* December, 1950, 318 f.; Melichar, E., "Der rechtliche Charakter der katholischen Religionsfonds," *ÖAKR,* II (1951), 31 ff.

legal personality and ecclesiastical ownership to certain charitable, educational and other kinds of ecclesiastical foundations which had been suppressed by the Germans.[26] It must be admitted that the problem is extremely complicated owing to the fact that many goods sequestered by the Germans are now considered to be "German property" under the ill-famed Potsdam-terms of 1945, and consequently are controlled by one or another of the occupying Allies. And this in spite of the fact that all these properties are of indisputable Austrian origin. This situation has strange consequences. Many of the older church buildings, oratories, etc. technically belonged to the Funds of Religion. There are churches dating back to medieval times which are now "German property" and the parishes have to pay rent to foreign military authorities for being permitted to use the buildings and premises. What this means under present circumstances can easily be imagined.

A similarly complicated situation exists in the Archdiocese of Salzburg. When the ecclesiastical principality of Salzburg was secularized in 1805, and eventually became an Austrian "Land", the Austrian monarchy became also the owner of the ecclesiastical properties of the Archdiocese. A special bilateral agreement was concluded between the Apostolic See and the Austrian emperor wherein the State promised considerable financial and material support in return for the benefits from the secularization.[27] The Germans discontinued most of the State contributions. This situation remained in existence also after the war. The Federal Government finally decided to ask the Law School of the University of Vienna for a legal opinion in this matter. Although its contents cannot be discussed here since the decision of the Faculty has not been published, it can be said that parleys are now going on between the respective government departments and the Archbishop on a friendly basis.

[26] 2. Rückstellungsanspruchsgesetz, BGBl 176/1951.

[27] Ebers, G. J., "Die Rechtsansprüche des Erzbistums Salzburg aus der Säkularisation," *ÖAKR*, I (1950), 173 ff.

The relations of Church and State in present-day Austria are definitely a postwar problem. Not only domestic political tendencies but also international tensions are reflected here. Undoubtedly the Church is faced with one of its most decisive phases in its long history in Austria. However, if the prelate whom we mentioned at the beginning of this paper would now repeat his question, our answer would be different. The Catholic Church in Austria has entered a new period. The past is definitely past. This can be felt also in the religious life. There will be struggle still ahead, but it will help to pave the way toward a new settlement between Church and State. It will meet with success for both parties if the underlying principles will be the honest recognition of religious freedom and of the divine rights of the Church and the natural limits of the State's power.

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YOUTHFUL RELIGIOUS SUPERIORS

Delegates to the First International Congress of Mothers General held in Rome agreed that youth should not be a bar to the office of superior in Orders and Congregations. (One supposes that the delegates subscribed the age requirements of canon 504 and of their own Constitutions.) They also agreed that there should be no "obstinate perseverance" in the reelection of superiors. They said that when conditions are equal between a superior in office and a new candidate, preference should be given the new candidate.

THE CONSTITUTIO PIANA, A HIDDEN TREASURE IN CANON 1125

1. *Introduction*

A poor man who suddenly awakens to the fact that he is the lucky owner of a great treasure, will find it difficult to adjust himself at once to the new "*modus vivendi*" demanded from him by the changed circumstances. Ever so often he will catch himself judging things by and acting according to the old standard. Something similar has happened to us. By the *Codex* new powers and faculties have been made common good and have been extended to Catholics over the whole world, which, up to 1918, were only the cherished possessions of a few persons or were only granted to some particular country or mission field.

Canon 1125 is one example of such a liberal gesture by the Church. By this canon three Constitutions are made common law, which so far had been granted to mission territories only, which Constitutions the Church expects us to use and apply all over the world to modern circumstances and in civilized parishes, where the "*favor fidei*" is just as much in need of special care and attention as in mission fields. It is a misconception, therefore, to consider and treat these one-time mission documents as struggling survivors of an old discipline deserving little more than a specialist's interest, as if they were relics of past glory worthy to be framed and admired in a museum, archaic oddities to be moth-balled and shelved in stuffy archives.

And amongst these three Constitutions the Constitution "*Romani Pontificis*", issued August 2, 1571, by Pope St. Pius V, referred to in Canon 1125 and to be found as Document VII among the appendices of the *Codex*, deserves special mention and will form the subject of this study. No doubt, many more documents have been issued by the Holy See in the

course of the centuries. But by selecting this one among and above a great number of other documents and printing it in full in her new book of law, the Church has given this Constitution of Pius V (together with the other two mentioned in Canon 1125) an importance which deserves special consideration and serious study. From mission-document it has become common law and as such we must place it in its proper perspective.

But like the rich "poor man," we hardly know what to do with the treasures placed at our disposal by this Constitution. We have been so accustomed to the strict discipline of the Pauline Privilege, that we dare not trespass beyond its boundaries. Traditional theology has been so accustomed to view all matrimonial dispensations for neophytes from the Pauline Privilege angle, measuring and gauging their dispensations by Pauline Privilege standards, that it finds it extremely difficult to adapt to the new more extensive powers granted by the *Codex*. To be able to assess the new situation correctly our first duty will be to study the theological basis and the historical background of this Constitution, and having established what the original petitioners asked for and why and in how far Pope Pius V granted their petition, we can draw our conclusions with regard to the kind of and the extent of the power now granted by this Constitution in the *Codex*.

2. *Extent of Concessions Made in Canon 1125*

But before embarking on such a discussion, it is essential that we have certainty of its universal extension to the whole world by Canon 1125. This canon says: "Those provisions which concern marriage in the Constitutions, '*Altitudo*,' of Paul III, June 1, 1537, '*Romani Pontificis*,' of St. Pius V, August 2, 1571, and '*Populis*,' of Gregory XIII, January 25, 1585, and which were written for particular places, are extended to other regions also *in the same circumstances*." From the text of this canon it is evident that a twofold inter-

pretation is possible. Consequently we find some authors[1] maintaining that the Constitutions are extended only to other *regions where the same circumstances* now prevail, i.e., those of the 16th century African slave trade, the forcible separation of husband and wife by slave raiders, polygamous and promiscuous marriages with the resulting general weakening of the original marriage concept, as the first missionaries found them in Mexico, Peru, Brazil and the other countries in Central and South America. Other authors, however, and by far the majority, maintain that the same circumstances must be present in each case and need not prevail in the countries or regions where such cases occur, i.e., the words "*in eisdem adjunctis*" do not refer to places but to persons.[2]

The *Codex* says clearly that the three Constitutions, which originally were given "*pro peculiaribus locis*" now "*extenduntur ad alias regiones*" provided the same circumstances apply there as existed in the regions for which they first were given. If the words "*in eisdem adjunctis*" belonged to "*ad alias regiones,*" one would first have to investigate whether polygamy is general in that region. The determination of its

[1] Augustine, *A Commentary on the New Code of Canon Law,* 8 vols., Vol. V (2. ed., St. Louis: B. Herder Book Co., 1920), p. 364; Gregory, *The Pauline Privilege,* The Catholic University of America Canon Law Studies, n. 68 (Washington, D. C.: The Catholic University of America, 1931), p. 87; Woywod, *A Practical Commentary on the Code of Canon Law* (10th printing, 2 vols., New York: Joseph Wagner Co., Inc., 1946), I, n. 1156; Ayrinhac, "Indissolubleness of Non-Catholic Marriages"—*Ecclesiastical Review,* LXXII (1925), 408.

[2] Vromant, *Ius Missionariorum,* Vol. V, *De Matrimonio* (2. ed., Bruxelles et Paris: Museum Lessianum, 1938), n. 340, p. 266; Cappello, *Tractatus Canonico-Moralis de Sacramentis,* Vol. V, *De Matrimonio* (5. ed., Romae: Domus Editorialis Marietti, 1947), p. 778, n. 787, § 7; Wernz-Vidal, *Ius Canonicum ad Codicis Normam Exactum,* 7 vols. in 8, Vol. V, *Ius Matrimoniale* (3. ed., a P. Aguirre, Romae: Apud Aedes Universitatis Gregorianae, 1946), n. 633; de Lery, *La Privilège de la Foi* (Montreal: Collection des Studia, 1938), p. 111; Payen, *De Matrimonio in Missionibus ac Potissimum in Sinis Tractatus Practicus et Casus* (2. ed., 3 vols., Zi-ka-wei: Typographia T'ou-se-we, 1935-36), II, n. 2404; Bouscaren-Ellis, *Canon Law, A Text and Commentary* (Milwaukee: The Bruce Publishing Co., 1946), pp. 558-59; Vermeersch, "De Canone 1125 eiusque vi extensiva"—*Periodica,* XX (1931), 1*-5*.

being general or not would make the application dependent upon a personal opinion and would make the use of the Constitutions a very cumbersome affair. The three Constitutions were originally given for Central and South America. At present, polygamy is no longer a general practice in those regions. If, however, we should adhere to the restrictive interpretation, it would follow that those for whom these privileges were originally intended, could no longer make use of them. And if that were the true interpretation, the *Codex* would have said "*restringuntur*" rather than "*extenduntur*". No one, however, has ever thought of excluding those countries from the use of these privileges. It seems but reasonable, therefore, to conclude that the words "*in eisdem adjunctis*" refer to individual cases. This makes the Constitutions applicable to any case where the required circumstances are realized. In our judgment this opinion is the true one and should be followed.

3. *The Theological Foundation of Constitutio Piana*

(a) Intrinsic and Extrinsic Indissolubility.

For a true evaluation of the issues at stake we have to eliminate any appearance of a contradiction between the papal power of dissolving a marriage contract and the fact of the *indissolubility of marriage,* always upheld and preached by the Church. When we say that marriage is indissoluble, we mean that the consent once given by two married parties cannot be annulled by mutual agreement or by the good pleasure of one of the parties; it cannot be rescinded; it binds for life. This is also called *intrinsic indissolubility.* This term is justified and a marriage is therefore rightly called indissoluble, even though a higher power extraneous to the two parties concerned, can in some serious cases dissolve the marriage, irrespective of the consent of either of the parties. If the marriage cannot be even dissolved by a power extraneous to the parties, it is *extrinsically indissoluble.* In this sense must we understand Canon 1118: "Matrimonium validum ratum

et consummatum nulla humana potestate nullaque causa, praeterquam morte, dissolvi potest". From this canon it follows that, if a marriage is not "*ratum*" (i.e. matrimonium infidelis consummatum vel non-consummatum) or not "*consummatum*" although it is "*ratum*" (i.e. matrimonium Christianum non-consummatum) it cannot be dissolved by the mutual agreement of the parties, i.e. it is intrinsically indissoluble, but it can be dissolved by the highest ecclesiastical authority, i.e. it is extrinsically dissoluble. From this it is evident that the intrinsic indissolubility does not necessarily bring with it the extrinsic indissolubility; or that the extrinsic *dis*solubility nullifies the intrinsic *indis*solubility.

The reason for this is as follows: A marriage is intrinsically indissoluble, since in the marriage contract not merely the two marrying parties are involved but also, and primarily God on whom depends the aim, the "*raison d'être*", the object of the contract. This object is not proposed *by* the parties but *to* the parties; it does not depend on them but it is proposed to them by the third interested party, to wit, God. The contracting parties and the marriage contract itself are therefore subservient to the "*raison d'être*", which is: a well-ordered continued existence of humanity. Just as a one-sided repudiation of a bilateral contract is not possible and does not relieve one from one's obligation, it is equally impossible that the two contracting parties rescind the marriage contract, since it concerns also a third party who is equally interested in it and whose consent is also needed. That third party is God, Who defines and poses the object. In order that the marriage contract can be dissolved, God's approval is also necessary. The two *contrahentes* alone can do nothing in respect of the marriage; God must be recognized in it.[3] The only authority who, independent of the parties, has anything

[3] Cf. W. A. O'Connor, "The Indissolubility of a Ratified Consummated Marriage"—*Ephemerides Theologicae Lovanienses*, XIII (1936), 692-722; Rayanna, "De Constitutione S. Pii Papae V, *Romani Pontificis*"—*Periodica*, XXVIII (1939), 114; Steur, *Dogmatisch Tractaat over het Sacrament huwelijks*, pp. 117-122.

to say in the matter of dissolving marriage contracts is God, Who either directly or through others can give permission for a dissolution.

(b) *Dissolution* of marriages *in the Old Testament.*

It is superfluous to go into details to prove that "*polygamia simultanea*" was tolerated in the Old Testament. Several patriarchs and kings practised it without being rebuked or punished for it by God or by His prophets. Moreover God allowed the Jews "on account of the hardness of their heart" to dismiss their wife, and after the handing over of the bill of divorce both were allowed to marry again, i.e. also "*polygamia successiva*" was permitted.[4] This fact of "*polygamia successiva*" comes up for discussion in Matthew, XIX, 3-12, Mark, X, 2-12, Matthew, V, 31-32, Luke, XVI, 18, I Letter to the Corinthians, VII. To understand the discussion described there, one must know that there were two rabbinical schools among the Jews, the school of Shammai and the school of Hillel. Shammai taught that in Deuteronomy, XXIV, 1, the word "*erwat dabar*" = Πορνεία = *foeditas,* signified a fault against chastity, whilst Hillel taught that any act on the wife's part which displeased the husband (e.g. going in public with uncovered head, spinning in the public streets, entering into talk with men, brawling, bad cooking, childlessness etc.,[5] entitled him to give her a bill of divorce. The Pharisees wanted Christ to take sides in this dispute, hoping for an answer that would prove damaging to Him. Therefore they asked Him whether a wife may "be put away for any and every cause". Our Lord answered that "only for impurity"[6] is it allowed to do so according to Deuteronomy, obviously siding with Shammai against Hillel. Immediately after that Our Lord goes on to give the principle of monogamy: by marriage husband and wife become one flesh—no man has the

[4] Deut. XXIV, 1-4.

[5] Cf. Edersheim, *Jesus Christ, the Messiah,* II, 332.

[6] Mt. XIX, 9; V, 32.

right to dissolve what God has joined together. Moses permitted divorce and, on account of the hardness of their heart, he even allowed a new marriage after that divorce. But from now on, i.e. under the New Law, " whosoever shall put away his wife, except it be for fornication, and shall marry another, committeth adultery ".[7] Christ admits, therefore, that a wife can be dismissed in the case of adultery, thus siding with Shammai in recognizing no other reason. The Church, guided by these words of Christ, admits therefore dismissal in the New Law, namely in Canon 1129, §1, where it says: " Propter coniugis adulterium, alter coniux, manente vinculo, ius habet solvendi, etiam in perpetuum, vitae communionem. . . ." The adulterous party can be dismissed therefore, but this does not mean to say that the marriage bond is broken—the dismissed party is by that dismissal not granted permission to contract another marriage; for the *Codex* repeats as it were the words of Christ: " and shall marry another, commits adultery ", when it says " manente vinculo ". For although Christ permitted a separation or dismissal, as was recognised in Deuteronomy and according to the explanation of Shammai, it is evident all the same that He adopted quite a different attitude toward this problem. Deuteronomy and Shammai allowed another marriage, i.e. not only separation but dissolution of the marriage bond; Christ, however, forbade another marriage.[8]

(c) *Dissolution* of marriages *in the New Testament. Favor fidei.*

The power to dissolve a previous marriage by a new marriage was withdrawn by Christ from the Jews individually, by depriving them of the power to take a personal decision in the matter, and was handed over by Christ to the Church. He did not give it to the Church unconditionally, however, but only

[7] Mt. XIX, 9.

[8] Cf. J. Bonsirven, S.J., " Le Divorce dans le Nouveau Testament "—*Clergy Review,* April 1951, p. 243 ff.

in so far as it would favor the faith, "*in favorem fidei*", thus deciding, when weighing up the eternal salvation of a soul against the positive law of indissolubility of marriage, in favor of the salvation of a soul. The decision as to whether or not the dissolution of a marriage will be "*in favorem fidei*" Christ did not however leave to the individual parties, as was the case among the Jews, but He left this to His Church represented by its visible Head, the Pope. To St. Peter, the first Pope, Christ entrusted the power to loose whatever might be presented for dissolution, when He said: "Whatever thou shalt loose on earth, shall be loosed also in Heaven".[9] The dissolution is therefore not effected by a purely ecclesiastical law, but it takes effect by an act of the Church executing thereby a divine law by virtue of a divine authority, i.e. *iure divino sed potestate Ecclesiae ministeriali,* and in that sense, therefore, also *iure Ecclesiae.*[10]

From the very first centuries the Church has made use of this power and we find it mentioned already in the First Letter to the Corinthians (VII, 12 ssq.), where an application of this power is reported which is now commonly known as the *Privilegium Paulinum.* In the case there mentioned St. Paul grants the dissolution of a heathen marriage in view of enabling the new convert to contract a Catholic marriage on condition, however, that the heathen party "departs", i.e. is unwilling to be converted or to live in peace with the convert. What St. Paul has done when the "*discessus partis infidelis*" could not be ascertained for one reason or another, what the other Apostles or what the Church before the 16th century has done in such circumstances, is unknown to us. It is certain, however, that the Church also under conditions other than a legally verified "*discessus*" can dissolve heathen consummated marriages. For Christ did not impose any limitations when he gave the power to dissolve and we know with certainty that after the 16th century the Popes have applied this power in

[9] Mt. XVI, 19; XVIII, 18.

[10] Cf. Steur, *o.c.*

favor of neophytes even in cases which did not come within the scope of the Pauline Privilege. Some of these applications "*in favorem fidei*" the *Codex* has collected in the canons which follow after Canon 1118. Having laid down in this canon that a Christian consummated marriage (*matrimonium ratum et consummatum*) is absolutely indissoluble, the Church declares in Canon 1119 that *matrimonia rata sed non-consummata* are dissoluble by solemn profession and by papal dispensation. In the following canons sc. Canons 1120–1126, the *Codex* deals with marriages which lack the sacramental character.

(d) *Dissolution* of marriages *in the Codex.*

Marriages which do not possess the sacramental character can be dissolved in the first place by the Pauline Privilege, as we read in Canon 1120, §1: "Legitimate marriage between non-baptized persons, even though it has been consummated, is dissolved in favor of the Faith by virtue of the Pauline Privilege". The following Canon, 1121, §1, lays down that for the valid use of this privilege it is essential that the "*discessus partis infidelis*" is established by a twofold interpellation of the non-baptized party, namely: 1) "whether he or she is also willing to be converted and to receive baptism; 2) or at least to cohabit peacefully with the other party without offense of the Creator". These interpellations are "*ad validitatem*" the canon says, an essential condition, therefore, for the valid use of the Pauline Privilege. When we then read in the following paragraph of the same canon: "These interpellations must always be made *unless the Holy See shall have declared otherwise*", it is evident that the Holy See claims the right to dissolve marriages without the interpellations having been made. This can only mean one of two things: either that the Church for such cases declares authoritatively that the "*discessus partis infidelis*" is certain and that therefore the interpellations are superfluous, or that the Church has another power at her disposal, the exercise of which does not demand a "*discessus*". If the former, then

the Pauline Privilege is safeguarded; if the latter, then we must come to the conclusion that the Church makes use of another power to dissolve marriages beyond the Pauline Privilege. Now we know that the Church grants a dissolution of the heathen marriage bond, when the legitimate wife is unknown,[11] or when she cannot be reached,[12] or if she does not want to answer and perhaps has even been baptized already.[13] Even with the broadest interpretation one cannot construe this as a "*discessus*". We are forced to the conclusion, therefore, that the Church in these cases dispenses from, or rather, with the interpellations not because there is any certainty about the "*discessus*", for actually there is not, but because there is no need for ascertaining the "*discessus*", there being no "*discessus*" required for the use of the other power now put into operation, which Christ gave to St. Peter and to his successors in the papacy, when He said: "Whatsoever thou shalt loose on earth, shall be loosed also in heaven", which power is known as the "*plenitudo potestatis Romani Pontificis*". Of this power the Church makes use in Canon 1125 for the dissolution of heathen marriages without demanding interpellations. And it is in view of this use that Canon 1121, §1 mentions that interpellations are necessary for validity "except as provided in Canon 1125".

This leads us to conclude that there is no reason and no room for interpellations when applying the faculties of Canon 1125, because by them the right is granted to contract a new marriage not on condition of "*discessus partis infidelis*", but on other conditions which will be laid down separately in each Constitution. According to the tenor and the nature of the Constitutions, therefore, there is no need and no room for interpellations. The faculties granted by Canon 1125 are, therefore, different from the Pauline Privilege which stands or falls with the interpellations, and hence the privileges accruing

[11] Const. "*Altitudo*".

[12] Const. "*Populis*".

[13] Const. "*Populis*" and Fac. Apost. 25, 26, 27.

from these faculties do not derive from the Pauline Privilege, but from the same source from which also the Pauline Privilege has sprung, namely from "*plenitudo potestatis Romani Pontificis*", exercised "*in favorem fidei*". Hence this is also called "*privilegium fidei*", which can be applied in various ways. One particular application is found in the Pauline Privilege, other applications are found in the three Constitutions of Canon 1125.

4. *The Historical Background*

(a) *The Situation.*

Shortly after the discovery of America by Columbus, missionaries followed in the wake of the Conquistadores to try and convert the Indian tribes of Mexico, Brazil, Peru, etc. The prevailing custom of polygamous cohabitation made it difficult to make converts and, whenever possible, prolific use was made of the Pauline Privilege. Frequently it happened, however, that the Indian polygamist could not remember who was his first wife, and hence one of the essential conditions for the use of the Pauline Privilege, the interpellations of the legitimate wife could not be complied with. The Mission Ordinaries proposed this difficulty to the Holy See, and in answer to their query Pope Paul III issued on June 1, 1537 the Constitution "*Altitudo*", by virtue of which a convert polygamist who could not remember his first wife, was allowed to continue matrimonial life after his baptism with any one of his wives, even though she remained a heathen.

As time went on and converts increased, another difficulty arose. Among the convert polygamists there were some who did remember who was their first legitimate wife and like those who did *not* remember their first wife and had therefore been accorded the privilege of the Constitution of Paul III, they wanted to make a choice of their own from among their wives, in order to continue matrimonial life with her after baptism. Some of the missionaries solved this problem by allowing this, on condition that the chosen woman also became a

Catholic. The problem could not be solved by the Constitution "*Altitudo*", which supposed the first wife to be unknown and which evidently in these cases was not always true. But then they still had the Pauline Privilege which could be used if the first wife were known; but the convert-polygamists objected to any interpellations being made to the first wife thus running the risk of having to abandon the wife of their choice. They wanted to stay with her and it would have been extremely difficult for them to be separated from her. Some of the missionaries solved the problem by allowing them to continue married life, it is true, but many were not satisfied with this solution. The Ordinaries got scruples about the whole affair and were worried about it and hence they decided to place the whole dilemma before the Holy See, requesting guidance and power to solve this problem.

(b) *What did the Bishops ask for?*

The exact petition of the Bishops can perhaps be best defined as follows: the faculty to allow a convert polygamist to remain with any one of his wives who was baptized with him, the reason being, that it would be very hard on the convert to be separated from this, his chosen partner.

(c) *The answer from Rome.*

On August 2, 1571, Pope St. Pius V gave a decisive answer to settle these anxieties by the publication of the Constitution "*Romani Pontificis*" of which the operative parts run as follows: "Cum itaque, sicut accepimus, Indis in sua infidelitate manentibus plures permittantur uxores, . . . hinc factum est quod recipientibus baptismum permissum sit permanere cum ea uxore, quae simul cum marito baptizata existit; . . . sed quia durissimum esset separare eos ab uxoribus, cum quibus ipsi Indi baptismum susceperunt . . . ideo Nos, statui dictorum Indorum paterno affectu benigne consulere, atque ipsos Episcopos et ministros ab huiusmodi scrupulis eximere volentes, motu proprio et ex certa scientia Nostra, ac apostolicae potestatis plenitudine, ut Indi, sic ut praemittitur baptizati,

et in futurum baptizandi, cum uxore, quae cum ipsis fuerit baptizata et baptizabitur, remanere valeant, tamquam cum uxore legitima, aliis dimissis, apostolica auctoritate, tenore praesentium, declaramus, matrimoniumque huiusmodi inter eos legitime consistere ".

(d) *Analysis of this answer.*

It is clear from the carefully chosen words and from the " *stylus curiae* " used in this Constitution, that the Pope realized that he was called upon to grant a privilege which in its extent went far beyond the powers granted by the Pauline Privilege or by the Constitution of Paul III. He was called upon to make use of the supreme power given to him as successor of St. Peter, the unlimited power to bind or to loose something which lies even beyond the scope of the Pauline Privilege, a power by virtue of which the Pope alone can dispense, hence also called " *Dispensatio Summi Pontificis* ", and which demands the exercise of the plenitude of the Apostolic power. Hence in this Constitution he solemnly declares that he grants it " *motu proprio* ", which in the " *stylus curiae* " indicates a document which is granted not due to a request but " *ex liberalitate rescribentis et peculiarem vim habet* ".[14] " *Et ex certa scientia Nostra* " and fully aware of the tremendous decision he is taking (there is no question of a mistake therefore), the Pope declares he is making use of " *apostolicae potestatis plenitudine* " for the present privilege. In none of the other two Constitutions mentioned in Canon 1125, sc. that of Paul III and that of Gregory XIII, is the phrasing so deliberate, so solemn, so indicative of the importance of the decision which is being announced.

First of all the Pope deals with the marriages of those converts who, without proper dispensation, had been permitted to continue matrimonial life with any of their wives, " et quia saepenumero contingit illam non esse primam coniugem, unde

[14] Sipos, *Enchiridion Iuris Canonici* (3. ed., Pécs: Haladás, R. T., 1936), p. 38.

tam ministri quam Episcopi gravissimis scrupulis torquentur, existimantes illud non esse verum matrimonium". These illegal unions are now by this Constitution retroactively sanated and legalized.

With regard to the future the Pope declares that those ". . . in futurum baptizandi, cum uxore quae cum ipsis . . . baptizabitur, remanere valeant, tamquam cum uxore legitima aliis dimissis", and gives as his motivating reason for this concession: "quia durissimum esset separare eos ab uxoribus, cum quibus ipsi . . . baptismum susceperunt".

The Constitution is granted in favor of polygamists, i.e. only to those who exchanged matrimonial consent with more than one person. It is possible that a man has been living with more than one woman, but that he has only exchanged true matrimonial consent with one woman, whilst his cohabitation with the others has been fornicarious or adulterous. Such a person, though apparently a polygamist, is technically monogamist and hence he would not be entitled to make use of this Constitution. Moreover it does not follow necessarily that the first woman with whom he lived was his legal wife. Only the one with whom he first exchanged true matrimonial consent is meant by the term "first wife", although in the order of time she may have been the second or third wife.

The term polygamist applies to *polygynia* and *polyandria*[15] and also to *polygamia simultanea* and *successiva*.[16] It is sufficient that one of the two parties has been polygamist before conversion.[17]

Monogamists cannot use this Constitution and here lies one of the differences between this faculty and the *Privilegium Paulinum*.

[15] S.C.S. Off., 5 sept. 1855—*Collectanea S. Congregationis de Propaganda Fide* (2 vols., Romae, 1907), n. 1117.

[16] S.C. de Prop. Fide, 14 iun. 1806—*Collectanea S. Congregationis de Propaganda Fide*, n. 685.

[17] Cf. Payen, *De Matrimonio*, II, n. 2407 ad 1, p. 743.

5. *The Privilege*

By the Constitution "*Romani Pontificis*" a polygamist is permitted at his conversion to contract a Catholic marriage with one of his wives, who is willing to be baptized with him and from whom it is very difficult for him to be separated.

a) A polygamist is permitted, i.e. the privilege is granted directly to the convert polygamist himself, as is clear from the words in the Constitution: "Ideo Nos . . . ut Indi . . . cum uxore remanere valeant tamquam cum uxore legitima . . . declaramus", so that, strictly speaking, for a valid application of the Constitution, no intermediary is required [18] but for its licit application the directions of the Ordinary must be observed.[19]

b) It is also evident that the favor can be used only by a converted polygamist after his own baptism and after that of his chosen wife, for it says in the Constitution: "Sic ut praemittitur baptizati, et in futurum baptizandi, cum uxore, quae cum ipsis fuerit baptizata et baptizabitur". Moreover we gather from those words that she must have been one of his wives; "*cum uxore*", it says and not "*cum muliere*". If he wants to marry a woman who, before his baptism, had not been one of his consorts, the *Constitutio Piana* cannot be invoked, but the *Privilegium Paulinum* must be used with the observance of all its relevant conditions of interpellations of his first wife etc. On the other hand, if the first (i.e. legitimate) wife could not be found or could not be interpellated, he could, without applying the *Privilegium Paulinum,* marry any Catholic woman, no matter whether she had been one of his wives or not; not by virtue of the *Constitutio Piana,* however, but by virtue of the Constitution "*Populis*" of Gregory XIII, which says: "Concedimus facultatem . . . matrimonia cum *quovis* fideli . . . contrahere".

[18] Cf. Burton, *A Commentary on Canon 1125,* The Catholic University of America Canon Law Studies, n. 121 (Washington, D. C.: The Catholic University of America Press, 1940), p. 163.

[19] Cf. Peltier, *La Dispense des Interpellations en Pays de Mission,* pp. 112, 114.

c) Since in our supposition he marries one of his wives who was not his first wife, his cohabitation with her before baptism was not a valid marriage, a.v. their mutual consent, as long as the *matrimonium naturale* with the first wife had not been dissolved, could not have been true matrimonial consent. This can only come about when the baptized parties can avail themselves of the privilege of the *Constitutio Piana* and *"in favorem fidei"* and contract a new marriage by which the first heathen marriage is dissolved. But no marriage can be contracted between two Catholics without observing the canonical form. Hence, when using this Constitution the converts must contract a marriage after baptism *"in forma canonica"* and a mere renewal of consent is not sufficient. This is confirmed by an answer of the Holy Office on June 30, 1937, to a query of the First Council of Indochina: "According to the Constitution of Saint Pius V, Romani Pontificis, of 2 Aug. 1571, when a newly baptized convert, who before his conversion had several wives, wishes to remain with the wife who is baptized with him, is it required for the validity of this marriage that both parties renew matrimonial consent in the form prescribed by law?" Resp. "In the affirmative".[20]

6. *The Interpellations*

The old authors and some of the later ones,[21] viewing the *Constitutio Piana* as a modified application of the *Privilegium Paulinum,* demanded that interpellations be made or evidence be given that they could not be made. The majority of modern authors[22] agree that by virtue of the *Constitutio Piana* a

[20] *Acta Primi Concilii Indosinensis, Hanoi 1938,* pp. 176, 177; quoted in Bouscaren, *The Canon Law Digest,* III, 175, 176.

[21] E.g. De Smet, *Tractatus Theologico-Canonicus de Sponsalibus et Matrimonio* (4. ed., Brugis: Beyaert, 1927), p. 301, n. 353.

[22] Vermeersch-Creusen, *Epitome Iuris Canonici,* II (5. ed., Mechliniae et Romae, 1934), p. 303, n. 436; Wernz-Vidal, *Ius Matrimoniale,* p. 829, n. 633, *in fine;* Vromant, *De Matrimonio* (2. ed., 1938), p. 273, n. 344; Payen, *De Matrimonio,* II, p. 740, n. 2407, ad 3; Woods, *The Constitutions of Canon 1125 and Their Application in the United States* (Milwaukee: The Bruce Publishing Co., 1935), p. 55.

dispensation from both interpellations is granted *ipso iure*. This common opinion is supported by a decision of the Sacred Congregation for the Propagation of the Faith to a query from the First Plenary Council of China in 1924, which on account of its importance and bearing on the present discussion we shall quote in full:

"Dubium seu Votum.

Facultatem habent Ordinarii Sinenses 'dispensandi cum gentilibus et infidelibus plures uxores habentibus, ut, post conversionem et baptismum, quam ex illis maluerint, si etiam ipsa fidelis fiat, retinere possint, nisi prima voluerit converti.'

"Unde deduci videtur, in omni casu polygamiae etiam successivae, virum polygamum non posse secum retinere tamquam propriam uxorem mulierem secum baptizatam, *nisi interpellationibus praemissis,* ut sciatur num prima uxor converti voluerit.

"Aliunde, in Constitutione S. Pii V, *'Romani Pontificis'*, can. 1125, absolute dici videtur ut in casu polygamiae successivae possit neophytus secum retinere tamquam uxorem mulierem quae cum ipso baptizata fuerit, *nulla facta quaestione praemittendae interpellationis.*

"Primum Concilium Sinense videns frequenter inter nostros catechumenos reperiri tales qui cum secunda vel ulteriore successive uxore, in baptismum consentiente, baptismum petant, quibus durissimum est et fere impossibile tale matrimonium dissolvere, humillime Sedem Apostolicam orat utrum, *ad mentem Constitutionis S. Pii* V, supra citatae liceat Vicariis Apostolicis et Praefectis Apostolicis tales catechumenos cum tali in baptismum consentiente uxore simul baptizare, data eis insuper facultate ut in eodem matrimonio tamquam legitimo permanere valeant, absolute et *sine ulla interpellatione primae uxoris* an non". Responsum: "Affirmative".[23]

[23] Cf. *Primum Concilium Sinense, Anno 1924 . . . Celebratum: Acta-Decreta et Normae-Vota, etc.* (Zi-ka-wei: Typographia Missionis Catholicae, 1929), n. 12, p. 273. (Italics inserted.)

For a correct understanding of this important document, we must bear in mind that the problem which the Bishops of China proposed was how to deal with the polygamist-converts who wanted to be baptized with one of their wives, who was a second or even a third successive wife and who consented to be baptized as well. It was very hard and well nigh impossible to separate them.

One gathers from the context that the first wife was not unknown and could be reached and interpellated. An appeal to Faculty 24 of the *Formula Tertia Major* which demands only the first interpellation but dispenses from the second one, does not solve the problem, however. The *Constitutio Piana* would solve it and the Bishops think that since the very condition required by the Constitution: "quia durissimum esset eos separare ab uxore", is fulfilled, they are entitled to the use of the Constitution. They want, however, certainty and assurance from Rome that their interpretation, namely, that according to the tenor of the *Constitutio Piana* no interpellations are required, is the correct one. To this query Rome gave an unqualified direct answer: "Affirmative"! i.e. the *Constitutio Piana* has nothing to do with interpellations or with "*discessus*", for it is based on quite another principle, namely the "*durities separandi*"!

The fact that this answer was not published in the *Acta Apostolicae Sedis* does not limit its significance. For as Wernz remarks: "In his declarationibus sive decretis interpretativis speciatim commemorandae sunt declarationes, quae formaliter sunt particulares, sed aequivalenter videntur universales. Nam ratio decreti valet aequaliter pro omnibus, quia decisio pendet ab interpretatione decreti, quibus ex sese vis legis universalis competit".[24] Supported, therefore, by this answer of the Sacred Congregation for the Propagation of the Faith and the practically unanimous opinion of modern authors, we can hold "*tuta conscientia*" that by virtue of the *Constitutio Pi-*

[24] Wernz, *Ius Decretalium* (2. ed., 6 vols., Romae et Prati, 1905-1913), *De Matrimonio*, I, n. 145.

ana no interpellations need be made. This does not mean that only the formality of interpellations is dispensed with. But it does mean that the convert-polygamist is dispensed from inquiring into and from taking cognizance of the legal wife's wishes or actions in the matter with which the two interpellations are concerned. In other words, no right is granted to the first wife to interfere with, or to impede, the application of the Constitution. Neither her wish to live in peace with the convert, nor her wish to be baptized, nor the fact that she is perhaps baptized already, need to be taken into account. By dispensing from both interpellations the application of the Constitution is made independent of any interference by the first wife.

Hence also in case that the *first wife wants to be baptized,* this *Constitution can be used.* This is but a logical conclusion from the fact that the interpellations find no place in the application of the *Constitutio Piana.* Already in 1918 Ayrinhac wrote: " The convert may retain the wife who is baptized with him even if the first wife is willing to be baptized later ".[25] Father Puthota Rayanna proved this very ably in his articles in *Periodica.*[26] Other authors support this same opinion.[27]

Even if the first wife is baptized already, the *Constitutio Piana can be used.* There is no express statement to this effect contained in the Constitution, neither is it excluded. If we accept the exemption from interpellations, we must admit that the Constitution can be applied independently of any influence of the first wife. And because this can imply that a *" matrimonium ratum sed non-consummatum "* is being dissolved by the new marriage of the convert-polygamist, Pope

[25] *Marriage Legislation in the New Code of Canon Law,* p. 300, n. 307.

[26] " De Constitutione S. Pii Papae V, *Romani Pontificis "—Periodica,* XXVIII (1939), 50-52.

[27] Doheny, *Canonical Procedure in Matrimonial Cases, Informal Procedure* (Milwaukee: The Bruce Publishing Co., 1945), p. 556, ad 8; Cappello, *De Matrimonio,* p. 777; Coronata, *Institutiones Iuris Canonici de Sacramentis* (Taurinorum Augustae: Marietti, 1944-1946), III, pp. 904–906; Winslow, " The Application of the Pauline Privilege and the Constitutions of Canon 1125 in the United States "—THE JURIST, X (1950), 323.

Pius V declared that "*ex certa scientia*" (there was no question of a mistake or an oversight) he was making use of his "*apostolicae plenitudine potestatis*". For this power is needed, since only the Holy See can dissolve such a "*matrimonium ratum non-consummatum*" by the plenitude of its power received from Christ, whilst the Pauline Privilege would not be sufficient for such cases. Some authors do not admit that similar cases are covered by the faculty of the *Constitutio Piana* and their principal reason is that this would mean a violation or infringement of the right of a third party, namely of the already baptized or still to be baptized first wife.[28] Other authors, however, contend that also in such cases the Constitutio Piana can be used.[29]

The opponents who object that the right of a third party is thus unjustly violated, lose sight of the fact that "*ius generale*" has priority over "*ius particulare*". The "*ius generale*" of the "*favor fidei*" has priority over the private right of the individual, i.e., "*partis iam conversae*". As a matter of fact, the Church applies a similar procedure, as that which we are advocating here, in Canon 1119, where, as in the *Constitutio Piana* a "*matrimonium ratum sed non-consummatum*" is dissolved, the canon adding explicitly "*etsi altera pars sit invita*". Moreover, the Holy See avails itself of the same right and power in the Constitution "*Populis*" of Gregory XIII, when it declares the second marriage of a converted polygamist, contracted by using this Constitution, valid and indissoluble, even if later on one discovers that at the moment of contracting this second marriage the heathen party was unjustly prevented from manifesting its will or was even bap-

[28] Cf. Wernz-Vidal, *Ius Matrimoniale*, p. 830, n. 635, nota 87; Burton, *A Commentary on Canon 1125*, pp. 158-60; Vermeersch-Creusen, *loc. cit.*; Payen, *De Matrimonio*, II, n. 2407.

[29] Rayanna, "De Constitutione S. Pii Papae V, *Romani Pontificis*"—*Periodica*, XXVIII (1939), 205; Doheny, *loc. cit.*; Coronata, *loc. cit.*; Boudon, *Memento canonique et pratique pur l'usage du Privilege Paulin*, p. 55; Peltier, in *Revue du Clerge Africain*, November 1949, p. 438; *Promptuarium canonico-liturgicum*, XXXVII (August 1941), pp. 211-12; van Leeuwen, *Het Paulinische Voorrecht* (1950), pp. 91-92.

tized already. The same situation may occur in the application of the Apostolic Faculties 25, 26 and 27. In the face of these applications of the very same principle by the Church, it does not sound plausible to condemn its use when it concerns its application in the *Constitutio Piana.* The fact that this opinion has not been condemned or frowned upon by the Church can certainly be considered at least as a negative argument in its favor. And, as a final recourse, an appeal to Canon 1127 to solve the existing doubt "*in favorem fidei*" is always open.

7. *The Basic Condition*

The basic condition required for the use of this Constitution is "*Quia durissimum esset eos separare*". Recent commentators are agreed that the basic condition required for the privilege of the *Constitutio Piana* is: That it would be a very great hardship for the polygamist to be separated from the wife with whom he is living and who is willing to be baptized as well.[30] As we mentioned before, the Constitution "*Romani Pontificis*" is founded, not upon the Pauline Privilege, but on the plenitude of the apostolic power which the Pope possesses as the successor of St. Peter. Therefore, the rules and conditions required for the proper application of the Pauline Privilege should not be applied in the use of the Constitution. But although "*discessus*" is not required, still another valid reason must be verified in order that an existing heathen marriage may be dissolved. And this valid reason, this "*causa motiva*", which moved Pope St. Pius V to grant this privilege and which he therefore made the necessary condition for the valid use of this faculty, is the "*durities separandi*".

The great hardship of separation may arise from many and varied causes. The Pope gives one example when he adds "*maxime quia difficillimum foret primam coniugem reperire*". But as Rayanna[31] has pointed out: "Nam quod quis agit

[30] Cf. Cappello, Vromant, Doheny, Burton, Rayanna, Peltier, etc.

[31] "De Constitutione S. Pii Papae V, *Romani Pontificis*"—*Periodica*, XXVIII (1939), 199.

maxime pro certa ratione, agit simul et pro aliis rationibus. Quod autem facit pro unica vel sola ratione, hoc non faceret si illa ratio non adesset" and he adds that it is clear that the difficulty to find the legal wife is only a particular example of how it can be a severe hardship to separate the neophyte from his chosen wife. Other reasons could be: mutually strong love; children born from their cohabitation; compatibility of temperament. All these are secondary reasons, "*causae impulsivae,*" which strengthen the principal reason, "*causa motiva*". The principal reason would exist without them and it is sufficient by itself to entitle the convert polygamist to use the *Constitutio Piana* and thus facilitate his conversion.

Other reasons which disprove that the condition "*quia difficillimum foret primam coniugem reperire*" is an essential or exclusive reason, as some authors defend, become evident by comparing this Constitution with the two others mentioned in Canon 1125. If it is very difficult to find the first wife because no one knows which was the first lawful consort, the Constitution, "*Altitudo*", is to be used. If it is very difficult to locate the first wife, recourse should be had to the Constitution, "*Populis*", of Gregory XIII. In both cases therefore, there would be no need for the *Constitutio Piana.* Hence we can wholeheartedly subscribe to Vromant's words: "Quapropter, etiamsi uxor legitima facile reperiri possit, secus ac scripsimus in priore editione, opinamur nullam interpellationem esse instituendam".[32] And as Coronata aptly remarks: [33] "Conditio, quod durissimum sit viro converso talem uxorem quae cum ipso baptizata sit dimittere, numquam non adimpleri videtur, si vir illam inter alias elegerit". We are fully aware of some answers by the Holy Office and the Sacred Congregation for the Propagation of the Faith which appear to militate against this opinion. But it must be remembered that the failure of theologians and canonists to recognize any power in the Church to dissolve the marriages of the unbaptized other than

[32] *De Matrimonio,* p. 272.

[33] *Ibid.,* p. 905, n. 648.

that contained in the Pauline Privilege (resulting from the prevalent erroneous conceptions of the papal power over the bond of a "*matrimonium legitimum*") was responsible for an effort to make the Constitution conform to the conditions of the Pauline Privilege. Hence we will not treat at any length of the answer of the Holy Office on November 22, 1871, to the Vicar Apostolic of Siam or the answer of the Holy Office on June 30, 1937, to the First Council of Indochina, since these were private answers and as Cappello and Gasparri remark, Canon 17, §3, must be kept in mind in these cases: "Interpretatio authentica data per modum sententiae iudicialis aut rescripti in re peculiari, vim legis not habet et ligat tantum personas atque afficit res pro quibus data est",[34] or in the words of the Sacred Congregation for the Propagation of the Faith in *Litterae Dedicatoriae* to C.P. (p. 3): "Responsa S.O. non obligant nisi eos ad quos data sunt".

Summing up therefore, one concludes that the following procedure can be adopted in using the Constitution, "*Romani Pontificis*", of Pope Pius V:

a) *Ad liceitatem* a summary and extrajudicial investigation must be made to establish the very great difficulty involved in separating the polygamist-convert from his chosen consort who is not his first wife.[35]

b) It should also be established that a valid marriage had been contracted when both parties were unbaptized.

c) Certainty concerning the baptism of both parties should be obtained.

d) The records of this investigation should be filed in the archives.

[34] Cf. Gasparri, *Tractatus Canonicus de Matrimonio* (ed. nova, 2 vols., Romae: Typis Polyglottis Vaticanis, 1932), II, n. 1158; Joyce, *Christian Marriage* (London and New York: Sheed and Ward, 1932), p. 495; Wernz-Vidal, *Ius Matrimoniale*, p. 828, n. 633.

[35] Cf. Bouscaren-Ellis, *Canon Law, A Text and Commentary*, p. 560.

e) If both parties are not baptized on the same day, marital relations may not be resumed until the other party also has been baptized and the renewal of consent "*in forma canonica*" before a priest and two witnesses has taken place.[36]

f) An intermediary or special permission is not required "*ad validitatem*",[37] but it is advisable in such cases not to act without consultation with the Ordinary, who naturally can lay down regulations "*ad liceitatem*" concerning the use of the faculty.[38]

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[36] Cf. S.C.S. Off., 30 iun. 1937; cf. Bouscaren, *The Canon Law Digest*, III, 175-76.

[37] Cf. Peltier, *La Dispense des Interpellations en Pays de Mission*, p. 112.

[38] Cf. Bouscaren-Ellis, *loc. cit.*

THE ASSEMBLY OF HILVERSUM

A Protestant reform group in Holland known as the Assembly of Hilversum and composed of twenty-nine Calvinists, including ten pastors, has issued a pamphlet entitled *Reformation and Catholicism* arguing for a reexamination of the tenets of the Dutch Reformed Church in the light of their investigations. The pamphlet specifically urges the acceptance of the Catholic teaching on Baptism, the Real Presence, the nature of Holy Mass, and Apostolic Succession.

In regard to Apostolic Succession, the pamphlet affirms: "The Episcopate is indispensable because it represents the unity and the continuity of the Church, and because the validity of the sacraments through which we communicate with Christ is broken [when the Episcopate is rejected]". It records also this assertion: "The Apostolic Succession was broken by the Protestants, so that they lack the mighty mission to preach and administer the sacraments."

Cases and Studies

THE CONSTITUTIO PIANA AND INDIA'S INDULT

On April 19, 1952, the Sacred Congregation for the Propagation of the Faith issued a letter reporting the action of the Supreme Sacred Congregation of the Holy Office in reference to a *Postulatum* of the First Plenary Council of India held in 1950 in Bangalore.[1]

The *Postulatum* read:

"Ut ad mentem Constitutionis S. Pii V "Romani Pontificis" catechumeni (olim separati a legitima comparte infideli) cum comparte quacum nunc vivant, ad baptismum admitti possint et, nulla facta interpellatione primae uxoris, in unione, in qua nunc vivunt, permanere valeant, hoc matrimonio post baptismum per novum consensum rite convalidato."

When the Supreme Sacred Congregation first received the *Postulatum* on January 12, 1951, it replied through a letter dated April 10, 1951, that it desired more time to consider the request. On March 26, 1952, it reached the following decision:

"Attentis peculiaribus Indiarum adiunctis, conceditur Ordinariis eiusdem regionis facultas, quae in supra expositis precibus expetitur; iidem autem Ordinarii in singulis casibus prae oculis habeant condicionem moralem, socialem, oeconomicam primae uxoris, et curent ut eiusdem necessitatibus satis provisum sit iuxta normam iustitiae, christianae caritatis et naturalis aequitatis."

The Holy Father approved the decision and granted the favor in an Audience given to His Eminence, the Cardinal Secretary on the following day.

Father Sanders in commenting on the decision of the Supreme Sacred Congregation summarizes the doctrinal position regarding the Constitution of Pope St. Pius V at the time of the Bangalore Council in 1950. He says:

1. It was certain the privilege granted by Pius V, and as restated in canon 1125, does not require that it be difficult to find the first wife in order that it may be invoked.

[1] Cf. Sanders, "Beyond the Pauline Privilege"—*The Clergy Monthly* (Ranchi, India: The Catholic Press), XVI (1952), 206-218.

2. It was certain that in China,[2] and sufficiently certain that in other countries as well, no interpellations whatsoever have to be made when using the privilege.

3. As, however, practically all authors, even after the answer to *Votum* XII of the First Council of China and notwithstanding the view of Cappello[3] and the arguments of Rayanna,[4] still hold that the privilege cannot be applied when the first legitimate wife spontaneously declares her willingness to be converted and baptized, it was not considered safe to use the privilege in such cases.

Father Sanders argues that the new faculty permits in India the use of the privilege even when the first wife spontaneously expresses a wish to be baptized. The reply of the Supreme Sacred Congregation of the Holy Office did not explicitly refer to this case, but Father Sanders points to the fact that it was included in the text of the *Postulatum* and that this complete text was before the Holy Office at the time the decision was reached. He insists that if this case was to be excluded from the faculty, the way in which the *Postulatum* as well as the answer is worded would require that this be explicitly stated. Further, he points to the fact that the Holy Office asked the Sovereign Pontiff to grant the request and he argues from this procedure that the favor included the case in which the legitimate partner spontaneously declares her desire to be baptized, since otherwise nothing new would have been granted inasmuch as the common opinion of the authors holds that the interpellations are not required in the use of the privilege contained in the Constitution of Pope St. Pius V.

Father Sanders notes that those who follow Cappello and Rayanna will hold that the indult granted for India contains nothing new, nothing that is not already contained in the Constitution of Pope St. Pius V. On the other hand, he states that he is not prepared to say that the concession of the indult is an argument against the view of Cappello and Rayanna. For he observes that the Holy Office in giving an affirmative answer to the *Postulatum* may have

[2] Cf. *Votum* XII, *Primum Concilium Sinense, 1924 . . . Acta-Decreta et Normae-Vota* etc. (Zi-ka-wei, 1930), p. 332 f.

[3] *Tractatus Canonico-Moralis de Sacramentis*, Vol. V, *De Matrimonio* (5. ed., Romae: Domus Editorialis Marietti, 1947), n. 787, § 5.

[4] Rayanna, "De Constitutione S. Pii Papae V, *Romani Pontificis*"—*Periodica*, XXVIII (1939), 205.

desired to make certain that, if it be needed, the power of the Supreme Pontiff would be applied to dissolve the previous marriage.

Father Sanders notes that in spite of the insertion of the words: *ut, ad mentem Constitutionis S. Pii V "Romani Pontificis"*, the answer cannot be taken as a *comprehensive* interpretation of that Constitution, inasmuch as it is qualified by the clauses *"attentis peculiaribus Indiarum adiunctis, conceditur Ordinariis eiusdem regionis facultas."*

Father Sanders also points to his doubt as to whether the answer can be regarded as an extensive interpretation of the Constitution of Pope St. Pius V, inasmuch as the circumstances set forth in the *Postulatum* and in the answer are more restricted than those in the Constitution. In the *Postulatum* the catechumens affected are only those who are *already* separated from their legitimate partner, while in the Constitution, this limitation does not appear. Moreover, in the *Postulatum* the catechumens favored are those *now* living in the union that is to be validated, while according to the more common interpretation of the Constitution the convert would be allowed to marry one of the wives whom he had formerly dismissed and with whom he was not living at the time of his conversion.

Father Sanders concludes that the new faculty needs to be interpreted according to its own conditions when these differ from those set forth in the Constitution of Pope St. Pius V, inasmuch as it is a faculty independent of, though in line with the favor conceded in the latter.

THE ORDINATION OF QUASI-RELIGIOUS

Seizing the occasion offered by a response of the Pontifical Commission for the Authentic Interpretation of the Canons of the Code advising that indults be granted the Major Superiors of quasi-religious societies for the ordination of their subjects, a Claretian Father Gil [1] made an analysis of the law of the Code as it touches the ordination of those who belong to communities and societies that are not exempt religious institutes and in which there is lacking the jurisdiction that is possessed by the latter.

[1] *Commentarium pro Religiosis et Missionariis*, XXVIII (1949), 16-29. The last two paragraphs of the study of the present writer reports the provisions of the response of the Pontifical Commission.

Canon 678 [2] provides that the members of quasi-religious societies are governed, in the matter of the reception of holy orders, by the laws affecting secular clerics; and canon 964, 4°,[3] rules that all religious, with the exception of the exempt, are governed, in the matter of ordination, by the law of seculars.

Father Gil fails to find in these canons a satisfactory canonical basis governing the ordination of members of these quasi-religious societies and religious institutes and points to the lack of such a canonical doctrine as the deficiency which made it necessary that the Sacred Congregation of Religious should adopt the practice of granting indults in favor of the Superiors of the respective societies and institutes. On the part of quasi-religious societies, Father Gil seems to assign as the reason for the indults the juridical inelegances resulting from the application of canon 678, while on the part of religious institutes of perpetual vows, he argues for a position of non-exempt religious institutes almost equal with that of exempt religious institutes in reference to the ordination of their members. In doing this, he explicitly affirms his unqualified acceptance of a "*praxis curiae*" that may be at variance with his theoretical arguments. This unqualified acceptance the present writer also explicitly affirms.

In developing this concept, Father Gil proceeds over three avenues of approach. First he argues that the law of the Code affecting the ordination of seculars does not, to speak accurately, apply for the most part to the ordination of members of non-exempt religious institutes. Then he avers that under the juridical system of the Code it does not seem entirely logical to deny the faculty of issuing dimissorial letters to the Superiors of non-exempt clerical institutes. Finally he denies that the so-called dimissorial letters issued by a bishop for the ordination of members of non-exempt religious institutes are true dimissorial letters.

The first argument rests, in turn, upon three considerations: the concept of the proper bishop, the effects of incardination and of the issuance of dimissorial letter, and the title of ordination.

[2] Canon 678: In iis quae ad studiorum rationem et ad suscipiendos ordines pertinent, sodales iisdem legibus tenentur ac saeculares clerici, salvis peculiaribus praescriptionibus a Sancta Sede datis.

[3] Canon 964, 4°: Ordinatio ceterorum omnium alumnorum cuiusvis religionis regitur iure saecularium ...

As to the concept of the proper bishop for ordination, he insists that the norms of canon 956 [4] do not apply to even non-exempt religious and he notes three points of variation between these norms and those governing the ordination of religious.

First, he asserts that in the ordination of religious there is no need to make any reference to the bishop of the place of origin, though in the case of the ordination of seculars the bishop of the place of origin cannot be ignored.

Second, he emphasizes the contrariety existing between the concept of domicile as it applies to religious and to seculars, insisting that neither Superiors nor subjects have the intention of remaining perpetually in a given place.[5]

Third, he observes that a religious does not take the oath of remaining in the diocese of the ordaining bishop. He proceeds further and argues that the religious cannot promise to this unique type of proper bishop a canonical obedience which would be incompatible with the religious life and with the incorporation by which the religious by ordination is *ascribed as a cleric* [6] to his religious institute.

The argument is then advanced derived from the variation in the effects of ordination and of the issuance of dimissorial letters as they affect religious, on the one hand, and seculars, on the other. Three important divergences are examined.

[4] Canon 956: Episcopus proprius, quod attinet ad ordinationem saecularium, est tantum Episcopus dioecesis in qua promovendus habet domicilium una cum origine aut simplex domicilium sine origine; sed in hoc altero casu promovendus debet animum in diocesi perpetuo manendi iureiurando firmare, nisi agatur de promovendo ad ordines clerico qui dioecesi per primam tonsuram iam incardinatus est, vel de promovendo alumno qui servitio alius dioecesos destinatur ad normam can. 969, § 2, vel de promovendo religioso professo, de quo in can. 964, n. 4.

[5] Canon 92, § 1: Domicilium acquiritur commoratione in aliqua paroecia aut quasi-paroecia, aut saltem in diocesi, vicariatu apostolico, praefectura apostolica; quae commoratio vel coniuncta sit cum animo ibi perpetuo manendi, si nihil inde avocet, vel sit protracta ad decennium completum.

[6] Canon 111, § 1: Quemlibet clericum oportet esse vel alicui dioecesi vel alicui religioni adscriptum, ita ut clerici vagi nullatenus admittantur.

§ 2: Per receptionem primae tonsurae clericus adscribitur seu, ut aiunt, *incardinatur* dioecesi pro cuius servitio promotus fuit.

First, Father Gil notes that the religious is not thus incardinated in the diocese of the proper bishop and that, if he already is incardinated in a diocese, he is not excardinated from the latter.

Second, he insists that while a proper bishop may postpone or cancel the ordination of a secular subject, he can do neither in respect to a non-exempt religious and that he cannot refuse to give the latter the needed dimissorial letters.

Third, he offers the resulting bond of dependence between a proper bishop and his secular subject, following ordination, as a further item of variation inasmuch as no such bond arises between the proper bishop and the religious he ordains or for whose ordination the bishop issues dimissorial letters. The secular cleric, on his part, must return to his diocese when summoned by his proper bishop; the bishop, on his part, is bound to provide for the support of the cleric. Neither element of this relationship is verified in the case of the non-exempt religious whom the proper bishop of the latter ordains or for whose ordination he issues dimissorial letters.

The title of ordination for religious, he proceeds to point out, bears no relation to the proper bishop in the case of the members of religious belonging to an institute of perpetual vows, even though the latter be non-exempt. In the case of these the title is not that of seculars, but rather that of exempt religious, namely the title of the common table or the title of poverty.[7]

That it is not logical for the Code to deny the faculty of issuing dimissorial letters to the Superiors of non-exempt clerical institutes of perpetual vows is an assertion resting on three arguments which follow.

First, the lack of incardination in a diocese after perpetual profession is shown to exist as a consequence of canon 585, in virtue of which a religious automatically loses the diocese which he had in the world.

Second, emphasis is placed on the fact that at ordination the religious is ascribed to his institute not as a religious, which is the effect of religious profession, but as a cleric. It is shown that as a

[7] Canon 982, § 1: Pro regularibus titulus canonicus est sollemnis religiosa professio seu titulus, uti dicitur, paupertatis.

§ 2: Pro religiosis votorum simplicium perpetuorum est titulus *mensae communis, Congregationis* aliusve similis, ad normam constitutionem.

§ 3: Ceteri religiosi, etiam ad ordinationis titulum quod attinet, iure saecularium reguntur.

consequence an ordained religious is not numbered among the members of the diocesan clergy. The religious is not subject to the bishop and the bishop is under no obligation to assume responsibility for the welfare, clerical or material, of the religious.

Third, it is held to be not just that the bishop should be burdened with the responsibility of the ordination of a non-exempt religious belonging to an institute with perpetual vows any more than he should be so burdened in the case of an exempt religious. On the contrary, it is regarded as equitable that dimissorial letters should be obtained from the Superior on whom the entire clerical life of the ordained religious depends and by whom it is governed.

That the dimissorial letters issued by a proper bishop for the ordination of a non-exempt religious belonging to an institute of perpetual vows are not true dimissorial letters is a proposition defended by the following considerations. The religious involved are not and will not be subjects of the bishop; the letters themselves cannot be refused if the candidate is recommended by his Superior; and the letters in their effect are totally lacking in that which is the juridical one. It is contended that these letters are nothing more than a formal act of the local ordinary enjoyed by him in default of the power of jurisdiction in the religious institute to which the candidate belongs. As such it is said to be only a permission granted by the bishop of the place who enjoys the prevalent right for the ordination of exempt religious who have a domicile in his diocese. In the case of the latter, the bishop of the place needs dimissorial letters from the Superior of the candidate; in the case of a non-exempt religious, the bishop of the place needs the consent of the Superior, which constitutes the true dimissorial letters in the case.

One may perhaps remark here that most of what Father Gil has said in relation to the ordination of non-exempt religious belonging to institutes of perpetual vows might have seemed applicable also in the case of religious institutes of temporary vows and to quasi-religious societies. Points of difference are discernible in relation to the title of ordination, the ascription through tonsure to the institute, and the exemption of religious from the oath of remaining permanently in the diocese of the proper bishop. But in the case of religious of institutes with temporary vows the latter two points of difference might have seemed to be not verified, so that in the case of these religious the only point of variation might have seemed to

be found in the title of ordination. Should a religious in such an institute enjoy the title of patrimony, there might have seemed to be no difference between his status and that of a religious belonging to a non-exempt institute with perpetual vows so far as his subjection to a bishop or a diocese is concerned or so far as the obligations of a bishop or a diocese are involved. For canon 956 does not discriminate between religious when it exempts them from taking the oath of remaining permanently in the diocese of the proper bishop and canon 111, § 1, does not discriminate between them when it refers to the ascription of religious to their institute through the reception of tonsure.

Of course both these canons in their explicit context refer only to the members of religious institutes and not to the members of quasi-religious societies. On the other hand, a member of a quasi-religious society might have seemed equally unable with a religious to take the oath of canon 956 by which he would pledge himself to remain permanently in the diocese of the proper bishop. Father Gil reconciles this oath, as well as the canonical obedience owed the proper bishop, with the obligation of the quasi-religious to obey his superiors by alleging a tacit renunciation of his right on the part of the bishop, effective as long as the quasi-religious remains in the society and to the extent that the exercise of the bishop's right is incompatible with the obligations assumed in the society. The reality of the situation might have seemed rather to be that the bishop in ordaining, or in granting dimissorial letters for the ordination of a quasi-religious, is merely supplying an instrumentality made necessary by the lack of a provision in the law for the authority competent to proceed to the ordination of quasi-religious. Such a bishop might have seemed generally to have neither the intention of providing his diocese with an additional cleric (for he knows quite well that the cleric will be bound by his obligations to his quasi-religious society) nor the willingness to renounce a right which he recognizes as practically non-existent, since he cannot recall the cleric to the service of the diocese, though under the theory of Father Gil, he would be obliged to receive the cleric should the quasi-religious society decide that the cleric was no longer suited to the society's aims, or the cleric should decide that the society was no longer suited to his.

In the absence of a provision in the law for the authority competent to proceed to the ordination of quasi-religious, could it have been said to be out of place to invoke canon 20 and to suggest that the needed authority be determined from the law governing the ordination of religious? Such a determination would result in the exoneration of members of quasi-religious societies, along with members of religious institutes, from the obligation of taking the oath of remaining permanently in the diocese of the proper bishop and from the canonical obedience to the latter, while relieving the bishop of the obligation of considering as a cleric of his diocese a quasi-religious over whom he has absolutely no control, over whom he probably will never have any control unless in circumstances when control will be of no value, i.e., when the quasi-religious society decides that the cleric is no longer fitted to serve the aims of the society or the cleric decides that the society is no longer suited to his. It might have seemed that such a use of canon 20 is in accord with the reality of the situation. On the other hand, there might have seemed to be a lack of provision in the law for any other solution of the problem, since canon 678 might have been regarded equally with canon 964, 4°, as failing in its complete application to the ordination of members of the respective institutes or societies the law governing the ordination of secular clerics.

If it had been held that the quasi-religious does not become a member of the diocesan clergy, would he then have been considered to be a *clericus vagus?* He would have been if it be impossible to call on canon 20 for the purpose of seeking a norm from the law of religious to cover the status of the quasi-religious resulting from the reception of tonsure. Now it might have been concluded that here, too, there is lacking a provision of the law for the status of a cleric who is not a member of a religious institute and who can be said to be a secular cleric only by resorting to what is generally a contradiction of the real situation. Just as there might have seemed to be lacking a provision in the law for the authority competent to proceed to the ordination of such a cleric, so also there might have seemed to be lacking a provision caring for his status subsequent to the reception of tonsure. If this be so, then it might have seemed justified to invoke canon 20 and to conclude that through tonsure a member of a quasi-religious society is ascribed to his society in a manner similar to that in which the member of a religious institute

is ascribed to his institute. Again it might have been concluded that canon 678 seems not to provide a norm that completely applies to quasi-religious and that its general terms may be deficient in reference to the specific problem of the status of the quasi-religious after first tonsure is received. In such a situation, the application of canon 20 might have seemed not out of place.

The inevitability of incardination in the diocese of the bishop ordaining a subject or of the bishop issuing dimissorial letters for the latter's ordination seems not to be available as an argument against this conclusion. Under canon 956 and its interpretation by the Code Commission [8] a bishop may ordain his subject for the service of another diocese in such a way that the conferring of first tonsure incardinates the subject in the other diocese. Of course, the case is not changed if, with the intention that his subject shall serve another diocese, a bishop does not actually ordain his subject but rather issues dimissorial letters for the latter's ordination. In this case the ordination or the issuance of dimissorial letters is not inevitably followed by incardination in the diocese of the bishop conferring first tonsure or issuing dimissorial letters for the conferring of it. True, the cleric is incardinated in a *diocese*, but the fact that the latter is not the diocese of the bishop ordaining or of the bishop issuing dimissorial letters for the ordination points to the fact that there is no inevitable connection between the intervention of a bishop in the manner described and the incardination of the cleric in his diocese.

In discussing the relation to religious belonging to an institute with perpetual vows of the bishop who ordains them or who issues dimissorial letters for their ordination, Father Gil points to the fact that the bishop assumes no responsibility for the religious but that the letters which the bishop issues are nothing more than a formal act of the bishop constituting a permission for the ordination of religious who have a domicile in his diocese.

He thus points to the bishop of the diocese in which is located the religious house to which the religious is assigned as the bishop authorized to act as the instrumentality of ordination under canon 956. As to religious belonging to an institute with only temporary vows and as to the members of quasi-religious societies, Father Gil

[8] Cf. Code Commission, 24 iul. 1939—*AAS*, XXXI (1939), 321; Bouscaren, *The Canon Law Digest*, II, 52, 237 f.

seems to admit that they, too, have a domicile in the diocese in which is located the house to which they are assigned.[9] Moreover, he seems implicitly to concede that canon 585 refers only to the excardination of clerics already incardinated in a diocese and not to laymen who are candidates for first tonsure and who, therefore, have never been incardinated in a diocese. This implicit concession seems to be contained in his distinction between those ordained before their entrance into a quasi-religious society and those ordained only after their admission into it. In the case of the former, Father Gil points to canon 585 as establishing the fact that they are not excardinated through their membership in the society, since it is only perpetual profession that results in excardination. In the case of the latter, that is, those who are not ordained clerics at the time of their entrance into the society, Father Gil does not recur to canon 585, but rather to canons 111, § 1, and 678, to establish the fact that by first tonsure they are not ascribed to the society and, as a consequence, must be incardinated in the diocese of the bishop who has the right to ordain or to issue dimissorial letters.

Now if canon 585 refers only to incardinated clerics and if the members of religious institutes with only temporary vows and the members of quasi-religious societies have a domicile in the diocese in which is located the religious house to which they are assigned, it seems to follow that, under canon 956 which designates as the proper bishop for ordination the bishop of the diocese in which the candidate has his domicile, the bishop who has priority in reference to the ordination of religious belonging to institutes with only temporary vows and of members of quasi-religious societies is the bishop of the diocese in which is located the religious house to which they are assigned, just as Father Gil says it is in the case of religious belonging to institutes with perpetual vows.

It is not too difficult to assign a reason why Father Gil's acceptance of a domicile in the diocese to which they are assigned seems justified. Once vows or oaths are taken or promises made, though they may be juridically temporary in their nature, they are based on the stability and the permanence of the intention of the candidate of persevering in the institute or the society which he has

[9] Cf. Coronata, *Institutiones Iuris Canonici*, 5 vols., I (Turin-Rome: Marietti, 1939), n. 128; Coronata, *Institutiones Iuris Canonici, De Sacramentis*, 3 vols. (Turin-Rome: Marietti, 1943-46), II, n. 31.

entered. Such a permanent intention seems incapable of reconciliation with the intention of preserving a domicile in the diocese in which one had a domicile prior to his admission into the institute or the society. Moreover, this conclusion seems justified even in the case of those who have not yet reached the age of their majority inasmuch as their emancipation from the authority of their parents releases them from the obligation of the necessary domicile which was incumbent upon them prior to their assuming of the obligations of the institute or the society.

It is possible, of course, that the religious or the quasi-religious would at the time of his admission into the institute or the society have a domicile situated in the diocese in which he was born. In that case, the bishop of the diocese would be the bishop both of origin and of domicile. In that case, moreover, the candidate would not be required to take the oath of remaining permanently in the diocese, an exemption based on the fact that the diocese is the diocese, not only of his domicile, but also of his origin. Aside from the fact that this case would rarely occur and that consequently it should not be made the foundation of a general norm, one notes further that even in the case mentioned the exemption from the oath is based on a presumption of stability belied by the negation of that stability such as is implicit in the obligation of obedience binding on a religious or a quasi-religious requiring him to go to the religious house to which his superiors assign him whenever they assign him to it. Thus a juridical inconsistency would be found in this situation not unlike that found in the oath to remain taken by one who cannot remain.

The problem of the *clericus vagus*, already discussed in reference to the effect of the conferring of first tonsure when it was suggested that in virtue of canon 20, a religious of an institute with temporary vows or a quasi-religious might have been regarded as ascribed to his institute or society, is confronted in the situation in which a religious or a quasi-religious leaves his institute. It derives from the silence of canon 641 [10] in relation to the status of religious of insti-

[10] Canon 641, § 1: Si religiosus in sacris constitutus propriam dioecesim ad normam can. 585 non amiserit, debet, non renovatis votis, vel obtento saecularizationis indulto, ad propriam redire dioecesim et a proprio Ordinario recipi; si amiserit, nequit extra religionem sacros ordines exercere, donec Episcopum benevolum receptorem invenerit, aut Sedes Apostolica aliter providerit.

tutes with temporary vows and of quasi-religious and from the failure of canon 681 [11] to include canon 641 as governing the case of such persons after they leave the religious institute or the quasi-religious society. Since canon 641 does not provide for the means through which these persons are to be incardinated in a diocese, the assumption is readily made that the law contemplates that they already belong to a diocese and that they have belonged to it throughout the whole period during which they were members of the religious institute or of the quasi-religious society. One notes that canon 641 does not provide for the case of a religious in minor orders who desires to leave a religious institute with temporary vows after he has made perpetual profession. Assuredly, under canon 115 and canon 585, even if he had previously been incardinated in a diocese, he is excardinated by the perpetual profession. One seems obliged to invoke canon 20 to determine the status of such a secularized religious, applying to the case the norm of § 2 of canon 641, in virtue of which a benevolent bishop could incardinate such a religious, following the norm of canon 117.

If it could have been admitted that in virtue of canon 20, the conferring of first tonsure on a religious belonging to an institute with temporary vows or on a member of a quasi-religious society ascribes him to the religious institute or the quasi-religious society, it might not have been amiss, again in virtue of canon 20, to apply to his secularization and his subsequent status the same norm as that provided in canon 641, except in the case in which he was a cleric incardinated in a diocese at the time of his entrance into the institute or into the quasi-religious society, for obviously in that case canon 585 governs and the cleric has, as a matter of definite law, remained subject to the bishop of the diocese in which he was incardinated. But canon 641, § 1, makes provision for such an in-

§ 2: Episcopus religiosum recipere potest hive pure et simpliciter, sive pro experimento ad triennium: in priore casu religiosus eo ipso est dioecesi incardinatus; in altero, Episcopus potest probationis tempus prorogare, non ultra tamen aliud triennium; quo etiam transacto, religiosus, nisi antea dimissus fuerit, ipso facto dioecesi incardinatus manet.

[11] Canon 681: Praeter proprias cuiusque societatis constitutiones, circa transitum ad aliam societatem vel ad aliquam religionem aut circa sodalium exitum a societate etiam iuris pontificii, serventur, congrua congruis referendo, praescripta can. 632-635, 645; circa eorum dimissionem, praescripta canon 646-672.

cardinated cleric even when he is a member of a religious institute with perpetual vows, for it provides that a cleric who had sacred orders when he entered the institute shall return to the diocese in which he was incardinated should he leave the institute before his perpetual profession. As a consequence, the exception verified in the case of the incardinated cleric who leaves a religious institute with temporary vows or a quasi-religious society, like the exception in which an incardinated cleric leaves an institute of perpetual vows, need not be pressed to the conclusion that whenever any member of a religious institute or of a quasi-religious society is secularized, he must have a diocese to which he has always belonged in order that he may have a diocese to which he can return. As canon 641 provides a means through which religious in sacred orders belonging to institutes with perpetual vows can find a diocese into which they may be incardinated, so canon 20 might have seemed available to supply a norm for religious belonging to institutes with temporary vows or to quasi-religious societies.

In the absence of an indult, however, in the case of religious belonging to institutes of temporary vows or to quasi-religious societies the practice of the Sacred Congregation of Religious has consistently been to require dimissorial letters, not from the superior of the institute or of the society, but from the bishop of the candidate's domicile.

By way of indult, however, the Sacred Congregation for the Propagation of the Faith had granted temporarily to the major Superiors of quasi-religious societies the faculty of presenting their candidates for ordination with only testimonial letters. In this case, a dispensation was issued from the requisite dimissorial letters. The Sacred Congregation consistently with this procedure also permitted the use of the title of the *common table*. Provision for the use of this title was inserted in the Constitutions of the respective societies, as was the norm that the perpetual bond by which the members were incorporated in the society constituted excardination and the correlative ascription to the society. Under these circumstances, a member thus excardinated could not leave the society without obtaining a benevolent bishop to receive him.

The Sacred Congregation for Religious also issued to quasi-religious societies temporary indults, the provisions of which were inserted in the Constitutions of some societies, permitting the issu-

ance of dimissorial letters for the ordination of their subjects, the employing of the title of the *common table* or some other title employed by religious, and the ascribing of their subjects to the society through the act of perpetual incorporation or, if perpetual incorporation did not exist in the society, after a specified period of temporary incorporation. This act of ascribing the subject to the society resulted in the loss of the proper diocese with the result that the member of the society thus ascribed could not leave the society without obtaining a benevolent bishop.

It was in view of this diversity between the practice of the Sacred Congregation for the Propagation of the Faith and that of the Sacred Congregation for Religious that a solution was sought from the Code Commission. The doubt proposed was "Who is entitled to issue dimissorial letters in the case of clerical societies without vows?" The answer, which has not been published in the *Acta Apostolicae Sedis,* was that it pertains to the local Ordinary according to the norm of canon 678. Nevertheless it expressed a preference that the faculty be given the Major Superiors of quasi-religious societies to grant dimissorial letters to their subjects for the reception of all the orders rather than that a dispensation be granted from the issuance of dimissorial letters, with the authorization extended to the Major Superiors in the latter case to present their subjects with only testimonial letters. The Commission further stated that the Major Superiors could also be given an indult permitting them to employ for the ordination of their subjects the title of the *common table* or of the *missions.* Clerics thus ordained are incorporated in the society to which they belong, but the diocese of origin is lost only after they are perpetually incorporated in their society or, if the society does not provide for perpetual incorporation, after a period of temporary incorporation (of three or of six years) as provided in their Constitutions. In consequence of this ascription to their society, members thus ascribed cannot be allowed to leave the society until they have found a benevolent bishop. The Commission authorized the insertion of these provisions in the Constitutions of clerical societies of pontifical approval and indicated that its decision was in accord with the clause of canon 678: "*salvis peculiaribus praescriptionibus a Sancta Sede datis*". The provisions were approved by the Holy Father.

Under these provisions, whether they exist in the form of an indult or as articles incorporated in the Constitutions of clerical societies of pontifical approval, the ordination of members of quasi-religious societies follows the norms of the Code governing the ordination of non-exempt religious of institutes with perpetual vows, with the additional faculty by which the Major Superiors are authorized to grant dimissorial letters for the ordination of their subjects. But this faculty is also enjoyed by the Major Superiors of many non-exempt institutes of perpetual vows, for, after a period of hesitation following the promulgation of the Code, the pre-Code practice of granting such temporary indults to all Superiors who requested them was resumed and it has been observed for a period of some twenty years.

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IS A DISPENSATION RETRACTABLE?

A couple obtained from the local ordinary, in accord with the latter's quinquennial faculties, a dispensation from the impediment of disparity of worship, but for unforeseen reasons the contracting of the marriage was delayed for months. During this interval the non-Catholic party developed a frame of mind that definitely would preclude the furnishing of any promises in protection of the faith of the Catholic party, or in certification of the Catholic baptism and upbringing of the children in the Catholic faith. Can the local ordinary cancel his earlier granted dispensation or at least render it ineffective for the contracting of a valid marriage?

ANGULATUS

Can. 80.—Dispensatio [est] legis in casu speciali relaxatio ...

Can. 86.—Dispensatio quae tractum habet successivum cessat iisdem modis quibus privilegium, nec non certa ac totali cessatione causae motivae.

Can. 54.—§ 1. Si in rescripto committatur merum exsecutionis ministerium, exsecutio rescripti denegari non potest, nisi aut manifeste pateat rescriptum vitio subreptionis aut obreptionis nullum esse, aut in rescripto apponantur conditiones quas exsecutori constet non esse impletas, aut qui rescriptum impetravit adeo, iudicio exsecutoris, videatur indignus ut aliorum offensioni futura sit gratiae concessio; quod ultimum si accidat, exsecutor, intermissa exsecutione, statim ea de re certiorem faciat rescribentem.

§ 2. Quod si in rescripto concessio gratiae exsecutori committatur, ipsius est pro suo prudenti arbitrio et conscientia gratiam concedere vel denegare.

Can. 1061.—§ 1. Ecclesia super impedimento mixtae religionis non dispensat, nisi:

1° Urgeant iustae ac graves causae;

2° Cautionem praestiterit coniux acatholicus de amovendo a coniuge catholico perversionis periculo, et uterque coniux de universa prole catholice tantum baptizanda et educanda;

3° Moralis habeatur certitudo de cautionum implemento.

Can. 1071.—Quae de mixtis nuptiis in canonibus 1060-1064 praescripta sunt, applicari quoque debent matrimoniis quibus obstat impedimentum disparitatis cultus.

The local ordinary can choose to grant his dispensation from the impediment of disparity of worship either with or without the aid of any intermediate agency for the execution of the rescript containing the grant of the dispensation. If he chooses the former method, then the pastor can, at the very time of the contracting of the marriage, stand guard over the fulfillment of the conditions that will warrant his action either *in notifying* the grant of the requisite dispensation if he be constituted as a purely executive agent (*in forma commissoria necessaria*), or *in granting* the asked for dispensation if he be constituted with the discretionary powers of a subdelegate (*in forma commissoria voluntaria*). In such a situation the dispensation does not gain operative efficacy until the pastor either through his act of executive ministry has made the dispensation applicable to the case, or through his act of effective grant has actually furnished the desired dispensation. If the local ordinary chooses the latter, i.e., to grant the desired dispensation outright (*sine interiecto exsecutore*), then the granted dispensation is effective from the time it was furnished by the local ordinary.

Can the local ordinary reverse this effected grant? If he did so, his action would be tantamount to restoring to force the application of the very law which his dispensation relaxed. But that restoration seems to be the equivalent of an act of legislation itself whereby the law came into existence. Now, since the law in question is a universal law of the Church, one must conclude that the re-enactment of such a law lies beyond the realm of the local ordinary's capacity and powers.

One should not argue that in the case here considered a local ordinary would inherently grant his dispensation as effective only upon the fulfillment of the conditions at the very time of the contracting of the marriage. Indeed, that he could do so is not precluded. But in the absence of any express indication to that effect

one must rather assume that the local ordinary has examined the merits of the request for the dispensation and has thereupon in an outright fashion granted his dispensation as available for the future marriage.

This is not to say that a pastor rightfully assists at the marriage despite his knowledge that under the changed circumstances a dispensation would no longer be granted, even by the supreme authority of the Church. The changed situation makes the use of the dispensation something unlawful, something that by positive law is wrong, to which the pastor cannot become a party. But despite the accompanying wrong that attaches to the contracting of the marriage, the marriage could nevertheless be *validly* contracted in view of the continued *valid* application of the earlier granted dispensation.

The dispensation as granted does not have a continued application simply in the exclusive sense contemplated in canon 86, i.e., that its application will cease with the incontestable and total cessation of the motivating cause of the dispensation. Canon 1071, through canon 1061, § 1, calls for the guarantees that favor the faith of the Catholic party and of the future children not in the sense of a motivating cause, but in the sense of a previously certified condition for the granting of the dispensation. Accordingly the granted dispensation will not lose its *validity* in the face of the non-Catholic party's changed frame of mind, even though under such a situation the dispensation could no longer be validly granted. Nor will the effect of the validly granted dispensation be lost even if later there has vanished the canonical cause in consideration of which the dispensation was earlier granted, for the grant of the dispensation was made on the assumption of the current realization of cause and condition, and not on the proviso of their existence at the later contracting of the marriage. In strict consequence the then granted dispensation, fully valid as it is assumed, does not and can not become invalidated through any change of circumstance at a later time.

If, then, the dispensation was not as yet granted inasmuch as it still looked to the future for the fulfillment of a condition or the continued existence of a canonical cause, then likewise there cannot be question of the invalidation of a dispensation that still had to achieve its very existence. On the other hand, if the dispensation was granted contingently on the existing cause and conditions, then

a lack of this cause later, or a change in the conditions later, is not a factor that can undo the earlier effected grant of a *valid* dispensation.

A fulfilled proviso that relates to present causes and conditions makes the granting of a dispensation stand in effect as something absolute. A proviso that relates to future causes and conditions as postulated factors for the granting of a dispensation attaches to the grant a conditional character, which for its realization has to deal with entities still in the future, as naturally happens when there is granted a dispensation that has successive stages in a continued application (the so-called *tractus successivus*).

It is in this latter situation that a cessation of the motivating cause for the dispensation makes inroads on the very validity of the dispensation, so that the continued use of the dispensation becomes invalid. But an absolute dispensation, inasmuch as it has effectively, once for all, relaxed a given law as otherwise obligatory for an individual is not subject to a repeal except by the one who has the native and inherent control of the law itself.

DEVOLVED RECOURSE?

For a dispensation from a given universal ecclesiastical law, must ordinaries have recourse to the Apostolic Delegate if the latter has the needed faculties and at the same time all the postulated conditions as set forth in canon 81 are verified, or, in such circumstances, may the ordinaries personally grant the dispensation as long as the Delegate himself can only with difficulty communicate with the Holy See?

EXANTLATUS

Can. 81.—A generalibus Ecclesiae legibus Ordinarii infra Romanum Pontificem dispensare nequeunt, ne in casu quidem peculiari, nisi haec potestas eisdem fuerit explicite vel implicite concessa, aut nisi difficilis sit recursus ad Sanctam Sedem et simul in mora sit periculum gravis damni, et de dispensatione agatur quae a Sede Apostolica concedi solet.

Pont. Comm. Intr., die 26 iun. 1947: D.—An clausula can. 81 "nisi difficilis sit recursus ad Sanctam Sedem" obtineat quoties Ordinarii facile recurrere possunt ad Legatum Romani Pontificis in regione, qui cum eadem Sancta Sede communicat. R.—Negative.[1]

[1] *Acta Apostolicae Sedis*, XXXIX (1947), 374.

The direct answer which the Pontifical Interpretation Commission has supplied in substantiation of the fact that ordinaries must have recourse to the Holy See through the Apostolic Delegate, as long as the latter is in ready communication with the Holy See, lets one conclude indirectly that ordinaries need not have recourse to the Apostolic Delegate when the latter can only with difficulty communicate with the Holy See, despite the fact that he may himself have all the needed faculties for the granting of the needed dispensation. The relative clause, "*qui cum eadem Sancta Sede communicat,*" is to be regarded, not as a statement that points to any factual condition of constant communicability between the Holy See and its Legates, but rather as a conditional qualification, so that recourse is to be made through the Apostolic Delegate whenever the latter is in ready communication with the Holy See.

The reply of the Commission revolves completely about the consideration whether at least the Apostolic Delegate can still communicate with the Holy See, and not about the notion whether or not the Apostolic Delegate himself has the faculties that would make a recourse to the Holy See unnecessary. It can readily happen that the Apostolic Delegate will continue to have communication with the Holy See, even when the ordinaries find such communication difficult, if not also impossible. It is in this situation that the reply of the Commission finds its full applicability.

The faculties which the Apostolic Delegate holds serve as a convenience for ordinaries, so that they may apply to him in place of having recourse to the Holy See. But the Delegate's holding of these faculties does not necessitate a recourse to him in place of the recourse to the Holy See, which even he no longer can invoke. Since the faculties held by the Delegate serve as a convenience, it is altogether natural that ordinaries will have recourse to him when a recourse to the Holy See, even through him, remains excluded. But ordinaries are free, in line with the ruling in canon 81, and also in harmony with the reply of the Commission, to undertake the granting of a dispensation, given of course the conditions delineated in canon 81, once they know that communication is likewise difficult between the Apostolic Delegate and the Holy See. It is quite immaterial in that event whether the Delegate does or does not hold the faculty of dispensing from the law in question.

CLEMENT BASTNAGEL

THE CATHOLIC UNIVERSITY OF AMERICA

EQUIVALENCE BETWEEN NUMBER OF STIPENDS AND MASSES OFFERED

I have heard of a case in which low Mass stipends offered for the same intention are combined to constitute stipends for high Masses. Do you think that credence should be placed in this report?

PERSCRUTANS

The report is most likely not true inasmuch as the practice described cannot be reconciled with canon 828. This canon requires that as many Masses be said as the stipends numerically considered, no matter how small, demand. Four high Masses remain four Masses and four Masses are not twenty Masses. Thus four high Masses are not numerically the equivalent of twenty stipends received.

A local Ordinary could establish five dollars as the stipend for a low Mass, in accordance with canon 831. But in that case the donor of twenty dollars would not be offering twenty stipends but four stipends. When the donor offers twenty stipends, twenty Masses must be offered.

Even in the case of a legacy in which the testator leaves a certain sum for Masses without designating whether low Masses or high Masses are to be offered, the Sacred Congregation of the Council has decided that low Masses are to be offered unless there are special reasons for thinking that the testator desired the offering of high Masses. But even then the individual case is to be referred to the Sacred Congregation.

INTERDIOCESAN DISPENSATIONS

We have two small missions at the edge of our Diocese which are more conveniently served by a pastor in the adjacent Diocese. The missions, however, belong to our Diocese and are in the territory of our Diocese.

Our problem arises in the matter of granting dispensations. The Bishop wishes the Bishop of the adjacent Diocese to take over jurisdiction and to grant dispensations for any mixed marriages in these two missions. He therefore delegated the Bishop to grant such dispensations. Since the Bishop is now subdelegated, can be in turn subdelegate for such times as he is away from his Diocese, so that his Vicar General or Chancellor may dispense? If this is not permitted, would it be possible for our Bishop to name the Bishop of the adjacent Diocese a Vicar General as to these two missions and give him the same delegated power as he himself enjoys in the Quinquennials?

AMBO

In regard to the issuing of matrimonial dispensations for marriages in the two missions at the edge of this Diocese, perhaps it might be desirable to subdelegate the Chancellor of the adjacent Diocese for all such dispensations. This suggestion is predicated on the willingness of the Bishops of both Dioceses that such a subdelegation be made. While the Chancellor of the adjacent Diocese could then grant the dispensation even when the Bishop was available, a working arrangement could be set up under which he would consult the Bishop before granting a dispensation when this would be possible. However, there should be no condition to this effect incorporated in the actual subdelegation.

If the Bishop subdelegates the Bishop of the adjacent Diocese, further subdelegation is prevented by canon 199, § 5. On the other hand, canon 366 would scarcely countenance the appointment of the Bishop as a Vicar General for two missions.

One sees in this situation a problem relating to the authority of the priest to assist at marriages. How does one insure that the proper authorization is vested in him? Should the local Ordinary delegate him for each individual marriage; or attach him as an assistant to a parish in the Diocese and then give him general delegation for the marriages which then he must celebrate within the limits of the parish to which he is assigned?

INVALID PERMISSION AFFECTING APOSTASY

What is the meaning of the "*illegitime egreditur*" of canon 644, § 1? Does it mean the failure to obtain a lawful permission or a valid permission? In other words would a religious absent with a valid but unlawful permission and with no intention of returning be an apostate?

What is the meaning of the "*sine Superiorum licentia*" of canon 644, § 3? Does it mean a religious who is absent without a valid permission or without a lawful permission? In other words can a religious absent without lawful permission but having a valid permission be said to be absent without the Superior's permission?

With regard to the validity of a permission to be absent it is said that a permission obtained by fraud, fear, deceit or force is invalid. With regard to a permission obtained through absolute force, that statement is in conformity with canon 103, § 1. That fraud, deceit or fear, however, invalidates a permission seems contrary to canon 103, § 2, since, as far as I know, the law nowhere warns of this fact.

It is also said that the powers of a Superior to grant permission to be absent are limited by the Code and the Constitutions of the Institute. Canons

601, 606, 607 are cited as limiting the Superior's powers. However it seems that these canons set forth the bounds of lawful action in this regard by the Superiors, but do not affect the validity of permissions granted contrary to their provisions, since they do not expressly or equivalently say so (canon 11).

As for limitations imposed by the Constitutions, our constitutions require a companion designated by the superior on outings or visits not connected with the ministry or an office. They forbid going out at night without a companion. They demand a serious reason for permission to dine out. The Provincial may not authorize residence outside a house of the Institute, except for a grave reason and then for the shortest possible time; for over three months he needs the authorization of the Superior General. For a useful purpose the local Superior may take or allow his subjects to take journeys of not more than five days and similarly he may be absent or allow his subjects to be absent for the same length of time. Our General Customary says: the Provincial may not allow trips from one continent to another; no one is allowed to visit his family without a serious reason and the stay must be as short as possible; newly professed are not allowed home after their first profession but exceptionally the Provincial may allow a short visit; the Provincial may allow a visit home after ordination but not exceeding fifteen days. . All these provisions of the Constitutions and the General Customary regulate the granting of permission to be absent but it seems to me that permissions given contrary to them would be illicit, but not invalid, since again I can find no indication of their being invalidating.

In conclusion it seems to me that the restrictions of the Code and at least our Constitutions and General Customary affect only the licitness of a permission to be absent and not its validity. If this is so it would follow that no permission to be absent granted by any Superior would be invalid and that as long as a subject has the consent of his Superior to be absent, even though that permission might be illicit, the religious could not be considered an apostate or a fugitive. With regard then to the element of permission the only time a religious could possibly be an apostate or a fugitive would be when he is absent without any consent of his Superior.

If the only time a religious could be an apostate or a fugitive would be when he is absent without any consent of his Superior, it would appear that a Superior could be an apostate or a fugitive only if his absence became known to a higher Superior who ordered him back to his residence and he refused to obey, since in all other circumstances he would have his own consent and he can give to himself any permission he can grant to others.

EXCERPTUS

In regard to the permission that saves an absence from being an apostasy, I note that Goyeneche,[1] whom Riesner[2] cites in regard to

[1] Goyeneche, "Consultationes"—*CpRM*, XVII (1936), 345-47.

[2] Riesner, *Apostates and Fugitives from Religious Institutes*, The Catholic University of America Canon Law Studies, n. 168 (Washington, D. C.: The Catholic University of America Press, 1942), p. 57.

the use of fraud, argues that canons 40,[3] 42,[4] operate to make the permission invalid, not merely unlawful. Moreover, Goyeneche adverts to the fact that even one who has departed from the religious house with the requisite permission becomes an apostate if he remains out of the house, with the intention of not returning, beyond the time limit of the permission. From this fact he deduces the conclusion that it is the intention that primarily constitutes the delict, though the effect of such an intention can be suspended through the operation of a valid permission. Schaefer merely offers the view of Goyeneche at the end of a paragraph in which he states that a permission, though fraudulently obtained, prevents the absence from being apostasy.[5]

The statement that in canons 601, 606, 607, there is found no invalidating clause, not even equivalently, one might meet with the axiom, "*Nemo dat quod non habet*". A superior's powers do not extend beyond what the law or the constitutions grant him. If he acts beyond that concession, he accomplishes no more than he would have in the period before he became superior. There is no need for the canons to state explicitly that a confessor lacking jurisdiction cannot grant valid absolution. Why should the law be expected then to state explicitly that a superior lacking authority to grant permission cannot grant such a permission validly?

It should be apparent, of course, that this problem more often occurs in relation to fugitives than in relation to apostates from religion, inasmuch as it is the fugitive rather than the apostate who would concern himself with the fraudulent extortion of a permission. The fugitive merely wants to leave the house temporarily. He does not wish to abandon the institute.

[3] Can. 40: In omnibus rescriptis subintelligenda est, etsi non expressa, conditio: *Si preces veritate nitantur*, salvo praescripto can. 45, 1054.

[4] Can. 42, § 1. Reticentia veri, seu subreptio, in precibus non obstat quominus rescriptum vim habeat ratumque sit, dummodo expressa fuerint quae de stylo Curiae sunt ad validitatem exprimenda.

§ 2. Nec obstat expositio falsi, seu obreptio, dummodo vel unica causa proposita vel ex pluribus propositis una saltem motiva vera sit.

§ 3. Vitium obreptionis vel subreptionis in una tantum parte rescripti aliam non infirmat, si una simul plures gratiae per rescriptum concedantur.

[5] Schaefer, *De Religiosis* (3. ed., Romae: Typis Polyglottis Vaticanis, 1940), n. 567.

EXTERNAL DEFENSE OF HERESY

In the course of a sacramental confession, Titius manifests to the confessor certain heretical opinions to which he obstinately adheres. Questioning determines that Titius has never before given expression to these heresies and that they are not mere temptations against faith. The confessor then succeeds in so disposing Titius that he is sincerely repentant and professes his faith in Catholic doctrine without reserve. Before giving absolution the confessor recalls the excommunication inflicted upon heretics by Canon 2314, § 1, and finds that he must decide whether Titius is now under censure. Does this external manifestation of formal heresy during a sacramental confession cause Titius to fall under the censure specified?

INTROGREDIENS

The profession of heresy is external in the sense required by Canon 2314, § 1, for the incurring of the penalty of excommunication specially reserved if it is uttered audibly even if it was audible only to the one uttering it. The special circumstance that in the case presented the utterance occurred during a sacramental confession presents two distinguishing grounds that cannot be overlooked. The one is that the utterance was made under the protection of the sacramental seal; the other is that ecclesiastical penal law concerns directly not the forum of conscience but the external forum.

The first consideration seems not to exonerate the penitent from the penalty. Indeed, the confessor cannot reveal the person of the penitent who made the defense of heresy. But if no one hears an utterance except the one making the utterance, the act is sufficiently external to result in the incurring of the penalty; and in this case no one can reveal the delict, since no one heard the utterance except the delinquent. Thus, it seems warranted to conclude that the obligation of the confessor to maintain secrecy regarding the utterance does not relieve it of its external character.

The second consideration derives from the forum in which ecclesiastical penal law directly operates, i.e., the forum that lies outside the interior activity of the soul. While the sacramental forum of penance is closely identified with this area of interior activity, it is not identical with it. That is to say that the words expressed and the acts performed in the sacramental forum are not merely interior words and acts. This seems sufficiently indicated by Canons 2367 and 2368 which impose penalties for delicts committed in the sacramental forum. It is true that the penalties are imposed on the confessor, but if the sacramental forum were entirely withdrawn from

the scope of directly imposed penalties, it would seem that even the acts of the confessor would also be withdrawn from it. If the external words and actions of the confessor are subject to direct punishment by ecclesiastical law, one seems warranted in concluding that similar acts of the penitent are similarly subject to this punishment. As a consequence one seems justified in holding that the external profession of heresy in the sacramental forum subjects the penitent to the penalty of specially reserved excommunication as specified in Canon 2314, § 1.

The imputability of the delict may, of course, be diminished by ignorance that is not crass or by confusion of mind that prevents sufficient culpability to constitute a grave sin. In this hypothesis, the penalty would not be incurred because the punishable delict has not been committed as contemplated by the legislator in constituting the penalty.

LEGITIMACY AFFECTED BY PARENTS' GOOD FAITH

A young man of my parish desires to study for the priesthood but he was born of parents who were married in a national parish that had withdrawn itself from the jurisdiction of the local Ordinary. The parents are said to have been in good faith; that is, the father who is still living says that both he and his wife had just come from Europe and all their friends and relatives told them that the church where they were married was the Catholic Church. The mother is now dead and the marriage was never validated. Is the young man involved illegitimate?

PRAETERIENS

A recent response of the Code Commission might seem to be relevant in this case.[1] In that response the Commission answered affirmatively the question whether Canon 209 should be applied to the case of a priest who assists at marriage lacking delegation. This response does seem broad enough to include the case in which the priest involved was considered authorized for only one marriage as well as that in which he was considered delegated for many marriages.[2] However, its extent seems restricted to error of fact so that it should not be considered as applicable to an error of law.

[1] 26 mart. 1952, ad VI—*AAS*, XLIV (1952), 497.

[2] Cf. Miaskiewicz, *Supplied Jurisdiction According to Canon 209*, The Catholic University of America Canon Law Studies, n. 122 (Washington, D. C.: The Catholic University of America, 1940), pp. 272-279.

Now in the case as stated, the common error seems to have been one of law, that is, the group of parishioners erroneously held that the authority of the local Ordinary was not necessary to make the priest ministering to them competent to assist at their marriages. The fact that the parents of the young man may have labored under error of fact does not make their error common error of fact. As a consequence, it seems warranted to conclude that their marriage was not a valid one.

But was it a putative marriage? If it were, then the young man in the case would be legitimate.[3] But a response of the Code Commission in 1949 interpreted the word " celebratum " in Canon 1015, § 4, as meaning " celebratum coram Ecclesia ".[4] The marriage of the parents of the young man was not celebrated " in the Church ". Consequently it seems unsound to argue for the good faith of the parents as constituting a basis for a putative marriage.

Since the marriage of the parents was neither valid nor putative, and since it was not validated prior to the death of the mother, the conclusion indicated seems to be that the young man is not legitimate, that he has not been legitimated, and that he is therefore irregular under Canon 984, 1°.

VICAR GENERAL'S RELATION TO VICAR FOR RELIGIOUS

When the Bishop has appointed a Vicar for Religious does he automatically by that very appointment restrict the authority of the Vicar General in relation to religious, for instance in the matter of the granting of delegaion for the hearing of the confessions of women religious?

AMPLIANS

In virtue of canon 368, § 1,[1] the Vicar General enjoys jurisdiction

[3] Canon 1114. Legitimi sunt filii concepti aut nati ex matrimonio valido vel putativo, . . .

[4] Canon 1015, § 4. Matrimonium invalidum dicitur *putativum,* si in bona fide ab una saltem parte celebratum fuerit, donec utraque pars de eiusdem nullitate certa evadat.

Cf. Code Commission, 26 ian. 1949—*AAS,* XLI (1949), 158.

[1] Can. 368, § 1. Vicario Generali, vi officii, ea competit in universa dioecesi iurisdictio in spiritualibus et temporalibus, quae ad Episcopum iure ordinario pertinet, exceptis iis quae Episcopus sibi reservaverit, vel quae ex iure requirant speciale Episcopi mandatum.

in the entire diocese in spiritual and temporal matters over which the Bishop possesses ordinary power, except such matters as the Bishop may have reserved to himself or for which the law demands a special mandate of the Bishop. The appointment of a Vicar for Religious in no way interferes with the concomitant exercise of jurisdiction by the Bishop himself. This is said merely to indicate that the naming of a Vicar for Religious does not imply exclusive jurisdiction in relation to the religious of a diocese. It seems safe to conclude that the Vicar General can possess concomitant jurisdiction over religious at the same time that a Vicar for Religious enjoys it. Since this is so, it seems that the Vicar General's jurisdiction over religious continues to be enjoyed unless the Bishop by at least some virtual or some implicit act restricts it. The appointment of a Vicar for Religious seems not to be an implicit restriction in this case.

VICAR GENERAL'S AUTHORITY RELATED TO CHANCELLOR'S DELEGATED AUTHORITY

When a Chancellor enjoys jurisdiction delegated by the Bishop to grant a dispensation from the banns, can the Vicar General grant such a dispensation to a petitioner whose request has been refused by the Chancellor?

PERTINAX

Canon 44, § 2,[1] rules that a favor is invalidly granted by a Vicar General if it has been refused by the Bishop. On the other hand, it provides that if the Vicar General refuses the favor the granting of it by the Bishop is invalid only if the petitioner does not mention the fact that the favor was refused by the Vicar General.

A refusal by the delegate of the Bishop is not the equivalent of a refusal by the Bishop, since the delegate enjoys the power of using his own judgment in weighing the reasons alleged for the granting of a dispensation. Therefore, it should not be said that the Vicar General is prevented from validly granting a dispensation when it has been refused by a Chancellor enjoying delegated authority.

[1] Can. 44, § 2. Gratia a Vicario Generali denegata et postea, nulla facta huius denegationis mentione, ab Episcopo impetrata, invalida est; gratia autem ab Episcopo denegata nequit valide, etiam facta denegationis mentione, a Vicario Generali, non consentiente Episcopo impetrari.

On the other hand, Canon 44 requires that even when the favor is sought from the Bishop himself after it has been refused by the Vicar General, mention must be made of this refusal if the favor is to be validly granted. It seems that in this respect the Vicar General's refusal is held equivalent to that of the Bishop. Since the refusal of the Chancellor is not thus related to that of the Vicar General, it seems that the former's refusal need not be revealed to the Vicar General.

PARTICULAR LATIN LAW AFFECTING ORIENTALS

I am confronted with a case in which a member of an Oriental Rite attempted marriage after obtaining a divorce from the secular courts. Did this Catholic incur the penalty inflicted in n. 124 of the III Plenary Council of Baltimore?

EXCIPIENS

It seems safe to hold that even when members of the Oriental Rite are subjects of the bishops of the Latin Rite, the latter can bind them only by precept except in matters affecting the maintenance of public order, and in these matters, to bind these subjects, that the bishops are required to make express reference to them. As is readily seen, subjects belonging to an Oriental Rite bear a relation to a bishop of the Latin Rite, according to the view just presented, that is comparable to the position of a traveler (*peregrinus*) as related to the bishop of the diocese in which he is temporarily dwelling, under the terms of Canon 14, 2°. In this view, then, the penalty of the III Plenary Council of Baltimore is held not to be binding on members of the Oriental Rites, even when they are subject to bishops of the Latin Rite.

JEROME D. HANNAN

THE CATHOLIC UNIVERSITY OF AMERICA

Decrees and Decisions

CANONICAL

PONTIFICIA COMMISSIO

AD CODICIS CANONES AUTHENTICE INTERPRETANDOS [1]

RESPONSA AD PROPOSITA DUBIA

Emi Patres Pontificiae Commissionis ad Codicis canones authentice interpretandos propositis in plenario coetu quae sequuntur dubiis, responderi mandarunt ut infra ad singula:

I.—DE DISPENSATIONE AB IMPEDIMENTIS MATRIMONIALIBUS

D. Utrum verba can. 1053 "*facta permissio transitus ad alias nuptias*" intelligi debeant dumtaxat de permissione facta a Sede Apostolica, an etiam de permissione facta ab Ordinario loci.

R. Negative ad primam partem, affirmative ad secundam.

II.—DE INTERPRETATIONE CAN. 598 § 2

D. I. An uxores Praesidum singulorum Statuum Foederatorum cum comitatu admitti possint intra regularium virorum clausuram ad normam can. 598 § 2.

R. Affirmative.

D. II. Utrum interpretatio data in responsione ad I sit declarative an extensiva.

R. Negative ad primam partem; affirmative ad secundam.

III.—DE AETATE CONFIRMANDORUM

D. An, attento can. 788, sustineatur mandatum Ordinarii loci vetantis quominus sacramentum Confirmationis administretur pueris qui aetatem decem annorum adepti non sint.

R. Negative.

[1] *AAS*, XLIV (1952), 496, 497.

IV.—DE LOCO ADSISTENDI MISSAE, LEGIS DE AUDIENDO SACRO IMPLENDAE CAUSA

D. An, non obstante praescripto can. 1249, legi de audiendo Sacro satisfaciat qui Missae adstiterit in loco de quo in can. 822 § 4.

R. Affirmative.

V.—DE INTERPRETATIONE CAN. 209

D. An praescriptum can. 209 applicandum sit in casu sacerdotis, qui, delegatione carens, matrimonio assistit.

R. Affirmative.

VI.—DE APPLICATIONE PRAESCRIPTORUM CAN. 197, 199, 206–209, POTESTATI DOMINATIVAE

D. An praescripta canonum 197, 199, 206–209, de potestate iurisdictionis, applicanda sint, nisi natura rei aut textus contextusve legis obstet, potestati dominativae quam habent Superiores et Capitula in Religionibus et in Societatibus sive virorum sive mulierum in communi viventium sine votis publicis.

R. Affirmative.

Datum Romae, e Civitate Vaticana, die 26 m. Martio a. 1952.

M. Card. Massimi, *Praeses*

A. Coussa, B.A., *a Secretis*

L. ✠ S.

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SUPREMA SACRA CONGREGATIO S. OFFICII

Decretum

Proscriptio Librorum—Monitum [1]

Feria IV, die 2 Aprilis 1952

In generali consessu Supremae S. Congregationis S. Officii Emi ac Revmi D.D. Cardinales, rebus fidei et morum tutandis praepositi, praehabito RR. DD. Consultorum voto, damnarunt atque in Indicem librorum prohibitorum inserenda mandarunt *Opera omnia* Alberti Pincherle (v. Moravia).

Hac oblata occasione, Emi ac Revmi Patres, ingens damnum deplorantes quod animabus infertur cum ex effrenata licentia edendi

[1] *AAS*, XLIV (1952), 432.

ac divulgandi libros, libellos, ephemerides quae res lascivas seu obscenas ex professo narrant, describunt aut docent, tum ex nefasta eadem indiscriminatim legendi cupiditate, *monendos* censuerunt:

omnes christifideles, ut memores sint gravissimae obligationis ab eorundem librorum et ephemeridum lectione prorsus sese abstinendi;

eos, ad quos pertinet iuvenum institutio atque educatio, ut, gravissimi officii conscii, illos ab huiusmodi scriptis, utpote ab insidioso veneno, omnino arceant;

eos tandem, qui pro suo munere civium mores moderari tenentur, ne huiusmodi scripta, quae ipsa naturalis honestatis principia ac fundamenta evertere nituntur, edi et divulgari sinant.

Sequenti Feria V, die 3 Aprilis 1952, SSmus D.N.D. Pius divina Providentia Pp. XII, in solita Audientia Excmo ac Revmo Dño Adsessori S. Officii concessa, relatam Sibi Emorum Patrum resolutionem approbavit, confirmavit et publicari iussit.

Datum Romae, ex aedibus Sancti Officii, die 20 Maii 1952.

Marinus Mariani, *Supr. S. Congr. S. Officii Notarius.*

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SACRA PAENITENTIARIA APOSTOLICA

(Officium de Indulgentiis)

Decretum [1]

INDULGENTIIS DITATUR PIAE INVOCATIONIS RECITATIO

Sacra Paenitentiaria Apostolica, vi facultatum a Ssmo D.N. div. Prov. Pp. XII sibi tributarum, christifidelibus universis, qui piam recitaverint invocationem: "*Domine, doce nos orare*", Indulgentias, quae sequuntur, benigne concedit: 1) *partialem trecentorum dierum*, saltem corde contrito lucrandam; 2) *plenariam*, suetis conditionibus semel in mense acquirendam, si quotidie per integrum mensem eadem invocatio devote recitata fuerit. Praesenti in perpetuum valituro absque ulla Apostolicarum Litterarum in forma brevi expeditione. Contrariis quibuslibet minime obstantibus.

Datum Romae, e S. Paenitentiaria Apostolica, die 30 Aprilis 1952.

N. Card. Canali, *Paenitentiarius Maior.*

S. Luzio, *Regens.*

L. ✠ S.

[1] *AAS*, XLIV (1952), 389.

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PONTIFICIA COMMISSIO

Ad Redigendum Codicem Iuris Canonici Orientalis

RESPONSUM AD PROPOSITUM DUBIUM [1]

Litterae Apostolicae Motu Proprio Datae
" Crebrae Allatae Sunt "

(XXII Mense Februario, Anno MDCCCCXXXXIX)

Canonis 86 § 1, n. 2 Interpretatio Authentica

D. I. An vi can. 86 § 1, n. 2 parochus et loci Hierarcha intra fines sui territorii licite et valide assistant matrimonio fidelium sui ritus etiam in locis quae sunt exclusive alius ritus, dummodo adsit expressus consensus Ordinarii, vel parochi, vel rectoris praedictorum locorum.

R. Affirmative.

D. II. Utrum interpretatio data in responsione ad I sit declarativa an extensiva.

R. Negative ad primam partem; affirmative ad secundam.

Datum Romae, die 8 m. Iulii a. 1952.

De speciali mandato Sanctissimi

M. Card. Massimi, *Praeses*

L. ✠ S. A. Coussa, Basilian. Aleppen., *a Secretis.*

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ACTA SS. CONGREGATIONUM

Suprema Sacra Congregatio Sancti Officii

MONITUM [1]

Gravi cum sollicitudine Apostolica Sedes animadvertit non paucos scriptores his ultimis temporibus, de vita coniugali agentes, passim palam et minute ad singula eam spectantia inverecunde descendere: praeterea nonnullos actum quemdam, amplexum reservatum nuncupatum, describere, laudare et suadere.

Ne in re tanti momenti, quae matrimonii sanctitatem et animarum salutem respicit, munere suo deficiat, Suprema Sacra Congregatio S. Officii, de expresso mandato SSmi D.N.D. Pii, divina Providentia Pp. XII, omnes praedictos scriptores graviter monet, ut ab huiusmodi agendi ratione desistant. Sacros quoque Pastores

[1] *AAS*, XLIV (1952), 552.

[1] *AAS*, XLIV (1952), 546.

enixe hortatur ut in his rebus sedulo advigilent et quae opportuna sint remedia sollicite apponant.

Sacerdotes autem, in cura animarum et in conscientiis dirigendis, numquam, sive sponte sive interrogati, ita loqui praesumant quasi et parte legis christianae contra " amplexum reservatum " nihil esset obiiciendum.

Datum Romae, ex Aedibus S. Officii, die 30 Iunii 1952.

Marinus Marani, *Supr. S. Congr. S. Officii Notarius*

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EUCHARISTIC INDULT FOR MARINERS

Sacra Congregatio
de Sacramentis

N. 9734/51

BEATISSIMO PADRE,

Il Delegato Apostolico a Washington, prostrato ai piedi della Santita Vostra, umilmente domanda per gli Ordinari degli Stati Uniti d'America la facolta di poter dispensare dal digiuno eucaristico i marinai americani della marina mercantile e i marinai appartenenti ad altre nazioni in servizio su navi e nei porti americani, in modo che possano prendere qualche cosa prima di accedere alla S. Communione.

* * *

EX AUDIENTIA SS.mi diei 24 Martii 1952.

Sanctissimus Dominus Noster Pius Papa XII, audita relatione infrascripti Cardinalis S. Congregationis de Sacramentis Pro-Praefecti, attentis expositis, Exc.mo Oratori gratiam indulgere dignatus est iuxta preces, sed tantum ad modum potus, servato ieiunio unius horae a potu, remota quacumque scandali et admirationis occasione.

Contrariis quibuslibet minime obstantibus.

Praesentibus valituris *ad triennium.*

✠ Card. Aloisi-Masella
Pro-Praefectus

[Nomine potus veniunt potiones ex cafaeo, thea, lacte, iure ceterisque substantiis etiam vim nutritivam habentibus, dummodo liquidi formam praeseferant.]

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ROMAN DECISIONS AFFECTING FAMILIES OF THE ORIENTAL RITE

Em.me ac Rev.me Domine:

Eminentiae Vestrae Reverendissimae ac Sacrae Congregationi pro Ecclesia Orientali refero casus de quibus infra, rogans ut Sacra Congregatio velit mihi dare principia solutionis.

I. Titius, Orientalis dissidens, anno 1941, attentavit matrimonium civile cum Anna, Latina, ac postea tres habuit filios. Nunc vero, poenitentia ducta, Anna implorat convalidationem talis matrimonii, dum vir dissidens sincere subscribit cautionibus. Unde quaeritur:

1) An convalidatio matrimonii celebranda sit coram parocho Orientali (vi canonis 1097, § 2) etiamsi vir maneat dissidens, vel potius coram parocho Latino mulieris, quae sola fidem et communionem Catholicam profiteatur?

2) Matrimonio convalidato, an filii, antea illegitimi, et nunc legitimati, adscribendi sint ritui Orientali, vel potius ritui Romano matris?

II. Titius, Orientalis dissidens, vult contrahere cum Anna, Catholica Latina; et strenue rogat ut celebratio matrimonii fiat in ecclesia Orientali sive dissidente sive Catholica; renuit comparere coram parocho Latino mulieris. Unde quaeritur:

1) An parochus Latinus ius habeat celebrandi tale matrimonium, ita ut parochus Orientalis Catholicus debeat licentiam obtinere parochi Latini, si velit licite matrimonio assistere?

2) An parochus Orientalis, tali in casu, iurisdictionem a iure habeat, ratione status viri Orientalis sed dissidentis; an potius ab Ordinario Latino tali parocho concedenda sit iurisdictio et licentia?

III. Titius et Anna, ambo Orientales Catholici, ex infantia adolescebant in populo Latino et semper adibant ecclesiam Latinam, quia omnino ignorabant linguam et mores Orientales. Matrimonium volentes contrahere, omnino renuunt coram parocho Orientali comparere; ideoque parochus Orientalis benigne concedit parocho Latino licentiam ut matrimonio assistat in ecclesia Latina et in ritu Latino. Unde quaeritur an tale matrmonium duorum Orientalium coram parocho Latino habendum sit validum, ratione actionis parochi Orientalis?

IV. Titius natus est ex patre Orientali dissidente et matre Latina, anno 1932. Anno autem 1930 pater ejus et mater, datis cau-

tionibus consuetis, contraxerunt coram parocho Latino matris. Non obstantibus istis cautionibus, pater curavit ut Titius baptizaretur in ecclesia Orientali dissidente. Exinde, pater mortuus est, et mater curavit ut Titius frequentaret ecclesiam Latinam, ita ut Titius numquam comparuisset in ecclesia ulla Orientali. Nunc vero, Titius vult contrahere cum Catholica Latina; et quaeritur an Titius adscribendus sit ritui Orientali ita ut matrimonium contrahendum sit coram parocho Orientali?

S. Purpuram Reverenter deosculans, maneo

Eminentiae Vestra Reverendissimae addictissimus

Archiepiscopus N.N.
Curiae Cancellarius

Em.mo ac Rev.mo
Eugenio Cardinali Tisserant
S.C. pro Ecclesia Orientali a secretis

Roma, die 11 m. Julii a. 1952

SACRA CONGREGATIO
" PRO ECCLESIA ORIENTALI "

Excellentissime Domine,

Epistulae Tuae qua huic S. Dicastero nonnulla subiiciebas dubia necnon matrimoniales casus, haec, studiose perspecta, rescribo:

1.—Ad primum: Titius, orientalis dissidens, anno 1941, civile attentavit matrimonium etc. . . .

R.—Matrimonii convalidatio facienda est coram parocho latini ritus. Proles antea suscepta ritui latino adscribenda est (can. 756 § 3 C.J.C.).

2.—Ad secundum: Titius, orientalis dissidens, cum Anna catholica latina contrahere vult. . . .

R.—Parochus latini ritus facultatem concedat sacerdoti orientalis ritus assistendi matrimonio de quo in casu in ecclesia latina aut in loco suae iurisdictionis. Haec facultas ad validitatem et ad liceitatem necessaria est.

3.—Ad tertium: Titius et Anna, ambo orientales catholici. . . .

R.—Si in territorio adsit paroecia canonice erecta ritus contrahentium et nupturientes subditi sint Ordinario loci latini ritus, paro-

chus ritus latini nequit valide matrimonio assistere sine facultate eiusdem loci Ordinarii.

Quod si in eodem territorio adsit Hierarcha loci ritus nupturientium, facultas matrimonii celebrandi coram parocho latino et in ecclesia latina a S.Sede concedenda est.

4.—Ad quartum: Titius natus est ex patre orientali dissidente et matre latina. . . .

R.—Titius ad ritum latinum certe adscriptus est (can. 765 C.J.C.)

Occasione data, meam Tibi sinceram devotionem exprimo ac maneo

Excellentiae Tuae Reverendisimae
addictissimus uti frater
(pro E.mo Cardinali a Secretis)

✠ Valerio Valeri
Assistant

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OUTSIDE THE CHURCH

OFFICIAL

The Supreme Sacred Congregation of the Holy Office has examined again the problem of Father Leonard Feeney and St. Benedict Center. Having studied carefully the publications issued by the Center and having considered all the circumstances of this case, the Sacred Congregation has ordered me to publish, in its entirety, the letter which the same Congregation sent to me on the 8th of August, 1949. The Supreme Pontiff, His Holiness, Pope Pius XII, has given full approval to this decision. In due obedience, therefore, we publish, in its entirety, the Latin text of the letter as received from the Holy Office with an English translation of the same approved by the Holy See.

Given at Boston, Massachusetts,
the 4th day of September, A.D. 1952.

✠ Richard J. Cushing
Archbishop of Boston

Walter J. Furlong
Chancellor

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Ex Aedibus S. Officii,
die 8.a augusti 1949

SUPREMA SACRA CONGREGATIO SANCTI OFFICII

Protoc. Num. 122/49

Excellentissime ac Rev.me Domine,

Suprema haec Sacra Congregatio perattente ortum ac progressum prosecuta est gravis controversiae quae a nonnullis sociis institutorum "St. Benedict Center" et "Boston College" excitata est circa interpretationem illius effati "*extra Ecclesiam nulla salus.*"

Quum autem omnia documenta ad rem necessaria vel utilia perspecta fuerint, inter quae sive notitiae ab ista Curia receptae, sive recursus et relationes, quibus socii instituti "St. Benedict Center" suas opiniones querelasque exponunt, sive etiam plura alia ad controversiam spectantia ex officio collecta, eadem Sacra Congregatio sibi persuasum habet, deploratam controversiam ortam esse ex eo quod effatum illud "extra Ecclesiam nulla salus" non recte comprehensum ponderatumque fuerit, eandemque exacerbatam ex gravi disciplinae perturbatione, qua nonnulli sodales institutorum quae supra memorata sunt, obsequium et oboedientiam erga legitimas auctoritates dectrectaverint.

Itaque Eminentissimi ac Rev.mi Patres Cardinales Supremae huius S. Congregationis, in conventu plenario, Feria IV, die 27 iulii 1949 habito, decreverunt et Augustus Pontifex in Audientia sequentis Feriae V, diei 28 iulii 1949, approbare dignatus est, ut dentur explanationes quae sequuntur ad doctrinam pertinentes, itemque invitamenta atque exhortationes, quae ad disciplinam spectant, tradantur:

Fide divina et catholica ea omnia credere tenemur, quae in verbo Dei scripto vel tradito continentur, et ab Ecclesia non tantum solemni iudicio, sed etiam ordinario et universali magisterio tamquam divinitus revelata credenda proponuntur. (Denzinger n. 1792).

Inter ea autem, quae semper Ecclesia praedicavit et praedicare numquam desinet, illud quoque infallibile effatum continetur, quo edocemur *extra Ecclesiam nullam esse salutem.*

Est tamen hoc dogma intelligendum eo sensu, quo id intelligit Ecclesia ipsa. Non enim privatis iudiciis explicanda dedit Salvator Noster ea, quae in fidei deposito continentur, sed ecclesiastico magisterio.

Et primum quidem Ecclesia docet, hac in re agi de severissimo praecepto Iesu Christi. Ipse enim expressis verbis Apostolis suis imposuit ut docerent omnes gentes servare omnia quaecumque Ipse mandaverat. (Matth. XXVIII, 19–20)

Inter mandata autem Christi non minimum locum illud occupat quo Baptismo iubemur incorporari in Corpus Mysticum Christi, quod est Ecclesia, et adhaerere Christo Eiusque Vicario, per quem Ipse in terra modo visibili gubernat Ecclesiam.

Quare nemo salvabitur qui, sciens Ecclesiam a Christo divinitus fuisse institutam, tamen Ecclesiae sese subiicere renuit vel Romano Pontifici, Christi in terris Vicario, denegat oboedientiam.

Neque enim in praecepto tantummodo dedit Salvator ut omnes gentes intrarent Ecclesiam, sed statuit quoque Ecclesiam medium esse salutis, sine quo nemo intrare valeat regnum gloriae caelestis.

Infinita sua misericordia Deus voluit ut illorum auxiliorum salutis quae divina sola institutione, non vero intrinseca necessitate, ad finem ultimum ordinantur, tunc quoque certis in adiunctis effectus ad salutem necessarii obtineri valeant, ubi *voto* solummdo vel *desiderio* adhibeantur. Quod in Sacrosancto Tridentino Concilio claris verbis enuntiatum videmus tum de Sacramento Regenerationis tum de Sacramento Poenitentiae. (Denzinger, nn. 797, 807)

Idem autem suo modo dici debet de Ecclesia, quatenus generale Ipsa auxilium salutis est. Quandoquidem ut quis aeternam obtineat salutem, non semper exigitur ut *reapse* Ecclesiae tamquam membrum incorporetur, sed id saltem requiritur, ut eidem *voto* et *desiderio* adhaereat.

Hoc tamen votum non semper explicitum sit oportet, prout accidit in catechumenis: sed ubi homo invincibili ignorantia laborat, Deus quoque *implicitum votum* acceptat, tali nomine nuncupatum, quia illud in ea bona animae dispositione continetur, qua homo voluntatem suam Dei voluntati conformem velit.

Quae clare edocentur in dogmaticis illis Litteris a Summo Pontifice PIO Papa XII, die 29 iunii 1943 editis "De Mystico Iesu Christi Corpore." (A. A. Sedis, vol. XXXV, a.1943, p. 193 ss). In iisdem enim Summus Pontifex nitide distinguit inter eos, qui *re* Ecclesiae tamquam membra incorporantur, atque eos qui *voto* tantummodo Ecclesiae adhaerent.

Agens enim de membris, quibus Corpus Mysticum hisce in terris componitur (A. A. Sedis, l. cit., pag. 202) idem Augustus Pontifex dicit: "In Ecclesiae autem membris *reapse* ii soli adnumerandi sunt

qui regenerationis lavacrum receperunt veramque fidem profitentur neque a Corporis compage semet ipsos misere separaverunt vel, ob gravissima admissa, a legitima auctoritate seiuncti sunt."

Circa finem autem earundem Litterarum Encyclicarum, amantissimo animo eos ad unitatem invitans, qui ad Ecclesiae Catholicae compagem non pertinent, illos commemorat "qui inscio quodam *desiderio* ac *voto* ad Mysticum Redemptoris Corpus ordinentur" quos minime a salute aeterna excludit, ex altera tamen parte in tali statu versari asserit "in quo de sempiterna cuiusque propria salute securi esse non possunt. . . . quandoquidem tot tantis caelestibus muneribus adiumentis carent, quibus in Catholica solummodo Ecclesia frui licet." (A. A. Sedis, l. cit., pag. 243)

Quibus verbis providentibus tam eos reprobat, qui omnes *solo voto implicito* Ecclesiae adhaerentes a salute aeterna excludunt, quam eos qui falso asserunt homines in omni religione aequaliter salvari posse. (Cfr. PII Pp. IX Allocut. "Singulari *quadam*" apud Denzinger, nn. 1646 ss.—item eiusdem PII pp. IX Litt. Encycl. "Quanto conficiamur moerore" apud Denz., n. 1677).

Neque etiam putandum est quodcumque votum Ecclesiae ingrediendae sufficere ut homo salvetur. Requiritur enim ut votum quo quis ad Ecclesiam ordinetur, perfecta caritate informetur: nec *votum implicitum* effectum habere potest, nisi homo fidem habeat supernaturalem: "Credere enim oportet accedentem ad Deum quia est et inquirentibus se remunerator sit." (Hebr. XI, 6). Ait enim Concil. Trident. (Sess. VI, cap. 8) "Fides est humanae salutis initium, fundamentum et radix omnis iustificationis, sine qua impossibile est placere Deo et filiorum Eius consortium pervenire." (Denz. n. 801)

Ex praedictis clarum igitur est, ea quae in commentario "From The housetops" fasc. III, tamquam genuina Ecclesiae Catholicae doctrina proponuntur, ab eadem longe distare et esse valde nociva tam iis qui intra quam iis qui foris sunt.

Ex hisce declarationibus, quae ad doctrinam attinent, nonnulla consequuntur, quae ad disciplinam et modum sese gerendi spectant, quaeque ignorari nequeunt ab iis qui strenue defendunt necessitatem, qua omnes adstringuntur, Ecclesiam veram participandi et sese subiiciendi auctoritati Romani Pontificis et Episcoporum "*quos Spiritus Sanctus posuit . . . regere Ecclesiam.*" (Act. XX, 28)

Itaque intelligi non potest quomodo Institutum "St. Benedict Center" sibi cohaereat, quod, quum se scholam catholicam profite-

atur ac talem habere velit, re tamen vera praescriptis canonum 1381 et 1382 Codicis Iuris Canonici non conformetur, idemque fons exsistat discordiarum et rebellionis contra auctoritatem ecclesiasticam et turbationis multarum conscientiarum causa.

Item non intelligitur quomodo religiosus vir, scilicet Pater Feeney, se " defensorem fidei " exhibeat, simulque impugnare non dubitet catecheticam institutionem, a legitimis auctoritatibus propositam, neque veritus sit incurrere in graves sanctiones a sacris canonibus comminatas ob graves ipsius transgressiones contra officia religiosi, sacerdotis et simplicis quoque fidelis.

Denique minime tolerandum est quosdam catholicos sibi tribuere velle ius publicandi commentarium, ad doctrinas theologicas evulgandas, sine competentis Auctoritatis Ecclesiasticae licentia quae " imprimatur " dicitur, ut sacris canonibus cautum est.

Sedulo igitur animadvertant illi qui in gravi discrimine adversus Ecclesiam versantur, semet ipsos, postquam " *Roma locuta est* " ne excusari quidem posse bonae fidei rationibus. Eorum sane vinculum et oboedientiae officium erga Ecclesiam multo est gravius, quam eorum qui " adhuc nonnisi inscio quodam voto " ad Ecclesiam ordinantur: considerent enim se esse filios Ecclesiae, ab Eadem lacte doctrinae et Sacramentorum pie enutritos, ideoque sese, audita clara voce Matris, ab ignorantia culpabili excusari non posse, et hac de causa de ipsis absque ulla restrictione valere verbum illud: subiectionem Ecclesiae Catholicae et Summo Pontifici debitam esse de necessitate salutis.

Quae dum Tecum communico impensam meam observantiam Tibi obtestor, permanens

Excellentiae Tuae Reverendissimae addictissimus

✠ F. Card. Marchetti-Selvaggiani

Secret.

A. Ottaviani
Adsessor

Exc.mo ac Rev.mo Domino
D.no Richardo Jacobo Cushing
Archiepiscopo Bostoniensi
Bostoniam

[Translation]

THE SUPREME SACRED CONGREGATION OF THE HOLY OFFICE

From the Headquarters of the
Holy Office
August 8, 1949.

Protocol Number 122/49.

Your Excellency:

This Supreme Sacred Congregation has followed very attentively the rise and the course of the grave controversy stirred up by certain associates of "St. Benedict Center" and "Boston College" in regard to the interpretation of that axiom: *"Outside the Church there is no salvation."*

After having examined all the documents that are necessary or useful in this matter, among them information from your Chancery, as well as appeals and reports in which the associates of "St. Benedict Center" explain their opinions and complaints, and also many other documents pertinent to the controversy, officially collected, the same Sacred Congregation is convinced that the unfortunate controversy arose from the fact that the axiom: "Outside the Church there is no salvation", was not correctly understood and weighed, and that the same controversy was rendered more bitter by serious disturbance of discipline arising from the fact that some of the associates of the institutions mentioned above refused reverence and obedience to legitimate authorities.

Accordingly, the Most Eminent and Most Reverend Cardinals of this Supreme Congregation, in a plenary session, held on Wednesday, July 27, 1949, decreed, and the August Pontiff in an audience on the following Thursday, July 28, 1949, deigned to give his approval, that the following explanations pertinent to the doctrine, and also that invitations and exhortations relevant to discipline be given:

We are bound by divine and Catholic faith to believe all those things which are contained in the word of God, whether it be Scripture or Tradition, and are proposed by the Church to be believed as divinely revealed, not only through solemn judgment but also through the ordinary and universal teaching office (Denzinger, n. 1792).

Now, among those things which the Church has always preached and will never cease to preach is contained also that infallible statement by which we are taught that there is no salvation outside the Church.

However, this dogma must be understood in that sense in which the Church herself understands it. For, it was not to private judgments that Our Saviour gave for explanation those things that are contained in the deposit of faith, but to the teaching authority of the Church.

Now, in the first place, the Church teaches that in this matter there is question of a most strict command of Jesus Christ. For He explicitly enjoined on His apostles to teach all nations to observe all things whatsoever He Himself had commanded (Matt., 28: 19–20).

Now, among the commandments of Christ, that one holds not the least place, by which we are commanded to be incorporated by Baptism into the Mystical Body of Christ, which is the Church, and to remain united to Christ and to His Vicar, through whom He Himself in a visible manner governs the Church on earth.

Therefore, no one will be saved who, knowing the Church to have been divinely established by Christ, nevertheless refuses to submit to the Church or withholds obedience from the Roman Pontiff, the Vicar of Christ on earth.

Not only did the Saviour command that all nations should enter the Church, but He also decreed the Church to be a means of salvation, without which no one can enter the kingdom of eternal glory.

In His infinite mercy God has willed that the effects, necessary for one to be saved, of those helps to salvation which are directed toward man's final end, not by intrinsic necessity, but only by divine institution, can also be obtained in certain circumstances when those helps are used only in *desire* and *longing*. This we see clearly stated in the Sacred Council of Trent, both in reference to the Sacrament of Regeneration and in reference to the Sacrament of Penance (Denzinger, nn. 797, 807).

The same in its own degree must be asserted of the Church, in as far as she is the general help to salvation. Therefore, that one may obtain eternal salvation, it is not always required that he be incorporated into the Church *actually* as a member, but it is necessary that at least he be united to her by *desire* and *longing*.

However, this desire need not always be explicit, as it is in catechumens; but when a person is involved in invincible ignorance, God accepts also an *implicit desire*, so called because it is included in that good disposition of soul whereby a person wishes his will to be conformed to the will of God.

These things are clearly taught in that dogmatic letter which was issued by the Sovereign Pontiff, Pope Pius XII, on June 29, 1943, "On the Mystical Body of Jesus Christ." (*AAS*, Vol. 35, an. 1943, p. 193 ff.). For in this letter the Sovereign Pontiff clearly distinguishes between those who are *actually* incorporated into the Church as members, and those who are united to the Church only *by desire.*

Discussing the members of which the Mystical Body is composed here on earth, the same August Pontiff says: "Actually only those are to be included as members of the Church who have been baptized and profess the true faith, and who have not been so unfortunate as to separate themselves from the unity of the Body, or been excluded by legitimate authority for grave faults committed".

Toward the end of this same Encyclical Letter, when most affectionately inviting to unity those who do not belong to the body of the Catholic Church, he mentions those who "are related to the Mystical Body of the Redeemer by a certain unconscious *yearning* and *desire,*" and these he by no means excludes from eternal salvation, but on the other hand states that they are in a condition "in which they cannot be sure of their salvation" since "they still remain deprived of those many heavenly gifts and helps which can only be enjoyed in the Catholic Church" (*AAS*, *loc. cit.*, 243).

With these wise words he reproves both those who exclude from eternal salvation all united to the Church *only by implicit desire*, and those who falsely assert that men can be saved equally well in every religion (cf. Pope Pius IX, Allocution "Singulari quadam," in Denzinger, nn. 1641, ff.—also Pope Pius IX in the Encyclical Letter "Quanto conficiamur moerore" in Denzinger, n. 1677).

But it must not be thought that any kind of desire of entering the Church suffices that one may be saved. It is necessary that the desire by which one is related to the Church be animated by perfect charity. Nor can an implicit desire produce its effect, unless a person has supernatural faith: "For he who comes to God must believe that God exists and is a rewarder of those who seek Him" (He-

brews, 11: 6). The Council of Trent declares (Session VI, chap. 8): " Faith is the beginning of man's salvation, the foundation and root of all justification, without which it is impossible to please God and attain to the fellowship of His children " (Denzinger, n. 801).

From what has been said it is evident that those things which are proposed in the periodical " From the Housetops ", fascicle 3, as the genuine teaching of the Catholic Church are far from being such and are very harmful both to those within the Church and those without.

From these declarations which pertain to doctrine certain conclusions follow which regard discipline and conduct, and which cannot be unknown to those who vigorously defend the necessity by which all are bound of belonging to the true Church and of submitting to the authority of the Roman Pontiff and of the Bishops " whom the Holy Ghost has placed . . . to rule the Church " (Acts, 20: 28).

Hence, one cannot understand how the " St. Benedict Center " can consistently claim to be a Catholic school and wish to be accounted such, and yet not conform to the prescriptions of Canons 1381 and 1382 of the Code of Canon Law, and continue to exist as a source of discord and rebellion against ecclesiastical authority and as a source of the disturbance of many consciences.

Furthermore, it is beyond understanding how a member of a religious institute, namely Father Feeney, presents himself as a " Defender of the faith ", and at the same time does not hesitate to attack the catechetical instruction proposed by lawful authorities, and has not even feared to incur grave sanctions threatened by the sacred canons because of his serious violations of his duties as a religious, a priest and an ordinary member of the Church.

Finally, it is in no wise to be tolerated that certain Catholics shall claim for themselves the right to publish a periodical, for the purpose of spreading theological doctrines, without the permission of competent Church Authority, called the " imprimatur ", which is prescribed by the sacred canons.

Therefore, let them who in grave peril are ranged against the Church seriously bear in mind that after " Rome has spoken " they cannot be excused even by reasons of good faith. Certainly, their bond and duty of obedience toward the Church is much graver than that of those who as yet are related to the Church " only by an unconscious desire ". Let them realize that they are children of the

Church, lovingly nourished by her with the milk of doctrine and the sacraments, and hence, having heard the clear voice of their Mother, they cannot be excused from culpable ignorance, and therefore to them applies without any restriction that principle: submission to the Catholic Church and to the Sovereign Pontiff is required as necessary for salvation.

In sending this letter, I declare my profound esteem, and remain

Your Excellency's most devoted

F. Cardinal Marchetti-Selvaggiani

A. Ottaviani
Assessor

To His Excellency
Most Reverend Richard James Cushing
Archbishop of Boston

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CONSTITUTION REGULATING MIGRATION

The Constitution "*Exul familia*" has been issued with the purpose of defining, coordinating, and reorganizing the functions of various existing ecclesiastical agencies in the field of migration. It reaffirms the authority of the Sacred Consistorial Congregation in relation to the spiritual care of immigrants, an authority conferred on it by Pope Pius X. The competence of this Congregation extends to the Apostleship of the Sea. The Constitution gives ship chaplains the faculties of pastors, except as to marriage. It makes special reference to the work of the Vatican Migration Office established in 1946 for the relief of those suffering as a result of the conflict in Palestine. It establishes norms for the work of the Pontifical College of Priests for Italian Emigration.

The Delegate for Emigration, now Monsignor Emilio Rossi, is charged with the responsibility of recruiting missionaries and of promoting pastoral activity in behalf of emigrants. Monsignor Rossi was an observer for the Holy See at the International Emigration Conference in Naples in October 1951.

An International Catholic Migration Commission was established by the Holy See at Geneva last year.

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PADRE PIO BOOKS ON INDEX

On June 23 the Supreme Sacred Congregation of the Holy Office placed on the Index eight books dealing with the stigmata of Padre Pio, Capuchin mystic. It is said that the reason may have been the fact that they lacked the *Imprimatur,* though the Sacred Congregation did not offer this as a reason for its action.

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VISA REFUSED ALBERTO MORAVIA

On July 14 the United States Embassy reported that Alberto Moravia, an Italian novelist, whose works are best-sellers in the United States, has been refused a visa to visit this country. All of his books have been placed on the Index.

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BOOK ON BLESSED MOTHER ON INDEX

The book entitled *La Mere, Vie de Marie* (*The Life of Mary*), by Robert Morel, has been placed on the Index in its French and German versions (*AAS,* XLIV, 481). All the works of André Gide have also been placed on the Index (*AAS, l.c.*).

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SECULAR

BUS TRANSPORTATION REFUSED FOR SWIMMING INSTRUCTOR

The Attorney General of Iowa has ruled that parochial school pupils in Iowa cannot be permitted to travel in public school buses at any time. He did this in upholding the action of a school board which had refused to permit parochial school pupils to ride in a public school bus to a place where they would receive free Red Cross swimming instruction.

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MICHIGAN SCHOOL DISTRICT ACCUSED OF ILLEGAL AID

Lake Linden school officials in the Upper Peninsula of Michigan have been warned by the State Education Superintendent against using public school money to support Catholic schools. At the same

time, he announced that the State was withholding $54,000.00 from the aid due the district for 1952–53, an amount which he said represented an overpayment of State aid in 1951–52 resulting from the inclusion of parochial school pupils in the district's report on its total number of students. He notified the Lake Linden school superintendent that the district had violated the State school law and a decision of the Supreme Court of the United States by using public money to support parochial schools. He alleged that the district had leased parts of three parochial schools at one dollar a year, that elementary classes were taught in them entirely by nuns, that Catholic textbooks were used, that part of the day was given to religious instruction, and that the walls bore religious statues and pictures. The district superintendent labeled the charges as " definitely erroneous " and as " unfair ".

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MASSACHUSETTS TOWN LAW AGAINST RELIGION REPEALED

The Attorney General of Massachusetts has announced that the town of Weston has removed a bylaw passed in 1931 which prohibited the imparting of religious instruction by any sectarian college or school. A corresponding law adopted by Dover in 1945 was ruled unconstitutional.

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COMPULSORY RELIGIOUS INSTRUCTION ALLEGED IN TEXAS

Five hundred parents of La Vega, Texas, signed a petition consisting of twenty-six pages in which they complained that the superintendent of the town school forced the children attending it to be present at religious sessions that were mainly conducted in " Baptist style ". Witnesses at the hearing further charged him with discriminatory actions against children of Latin-American descent. The Chairman of the Board said that the cases were isolated instances. But he reported that he had ordered the discontinuation of the religious sessions with the exception of reading of passages from the King James Version of the Bible, permitted under State law.

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PLACEMENT FOR ADOPTION IN MASSACHUSETTS

The Supreme Court of Massachusetts, with one dissent, has declared unconstitutional a law enacted in 1950 making it mandatory that children be placed for adoption with only members of the faith professed by the parents of the children. The consequence of this decision was that a Protestant couple was permitted to adopt a two-year-old girl whose parents were Catholics. The Supreme Court held that the legislature did not intend to cast aside other pertinent criteria employed in determining questions of child custody.

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REGISTRATION OF MARRIAGE OFFICIALS IN LOUISIANA

Louisiana has adopted a new requirement in virtue of which clergymen must be registered in the civil parish or parishes in which they are to assist at the celebration of marriages.

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CHIMES PROTECTED IN KENTUCKY

The Assistant Attorney General of Kentucky has ruled that the tower chimes of churches may not legally be banned by cities in their regulation or prohibition of the use of public address systems that emit loud and raucous noises.

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TAX ALLOTMENT FOR SEPARATE SCHOOLS IN NORTH WEST TERRITORIES

The Council of the North West Territories has approved a bill that compels all corporations in Yellowknife to give part of their taxes for the support of separate schools unless they can certify that one hundred per cent of their shareholders are supporters of the public schools. If they cannot do this, the division is to be made between the public and the parochial school boards in direct proportion to the ordinary assessment on property.

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CREMATION REJECTED IN RIO DE JANEIRO

A bill legalizing cremation in Rio de Janeiro and the surrounding federal district has been vetoed by the Mayor. This action was taken after Catholic Church authorities had denounced it as a violation of the Brazilian Constitution which recognizes Brazil as a Catholic country. The bill had been passed by the aldermen voting 30–6.

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PHILIPPINE ISLANDS ENACTMENTS

A ruling has been handed down by the City Treasurer's Office of Manila exempting Catholic school canteens and dormitories from the payment of license fees and municipal taxes.

At the First National Youth Conference, Dr. Vidal Tau, President of the Government-operated University of the Philippines, declared that religious instruction in the public schools of the Philippines is " constitutionally " obligatory.

The textbook board of the Philippines has banned two textbooks, *Philippine History for Catholic Elementary Schools* and *Philippine History for Catholic High Schools*, because it said they were " prejudiced " and biased in slant, because they expressed " unfriendly and discriminating ideas ", and because they were not in keeping with the spirit of the times or with the spirit of history. The Catholic Educational Association thereupon charged the board with trying to impose " thought control " and demanded clarification of the reasons for the secularistic action.

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FORCED CITIZENSHIP IN JERUSALEM

In a letter to Trygve Lie, UN Secretary General, representatives of Catholic, Protestant, Greek Orthodox, Armenian, and Moslem communities protested against a new citizenship law which forces citizenship on many who do not want it in defiance of a UN decision declaring the city an international zone. Those who do not wish citizenship should be given passports or other documents permitting travel, pending the implementation of the UN decision on the internationalization of Jerusalem.

Book Reviews

MEDIEVAL ECCLESIASTICAL COURTS IN THE DIOCESE OF CANTERBURY. By Brian L. Woodcock. Oxford Historical Series. Oxford University Press, London, 1952. Pp. xi-160. Price $3.50.

A welcome addition to the Oxford Historical Series appears with this volume of pioneer studies in medieval court personnel and procedure. Due to various causes comparatively little work has been satisfactorily done on the precise working of Church courts in medieval England. Some books, of course, and some monographs and articles have appeared from time to time but not with the everyday details found in this work.

This is not a book to be read casually. A fair knowledge of the general Canon Law of procedure is necessary for an honest grasp of the details found here. Many terms are different, not only from the general Canon Law of the thirteenth century, but also from modern procedural terms. It is only by comparing the separate concepts of these terms that adequate comprehension can be obtained. It is necessary, for instance, to realize that the term "perjury" in medieval English Church courts covered cases of bad debts.

Woodcock's work is a survey of the diocesan courts of Canterbury as well as a description of the operation of these courts. The provincial court of Canterbury which usually sat in London is not directly studied. Within the territory of the diocese of Canterbury, two courts exercised their jurisdiction: one was the Archbishop's court, the other was the court of the Archdeacon. Relations between these courts, both *sede plena* and *sede vacante* are studied by the author.

The second part of this volume is perhaps more interesting than the first. At least it should be more interesting to the practising jurist. This second part is a closely detailed description and analysis of the task of the court, the activities of its personnel, an examination of various pleas, an estimate of costs involved and an inves-

tigation into the methods of securing effective compliance with the decisions of the court. In regard to the last item, occasional recourse was had to civil power.

The appendix contains much material of considerable historical interest. Texts of commissions are illustrated and the documents comprising one whole case of an appeal are set down for study. In future editions, it is suggested that a glossary of terms be included with possible reference to equivalent terms in modern Canon Law.

The bibliography of this work is properly divided and constructed with sufficient care and zeal. The index is entirely satisfactory.

LA LÉGITIMATION DES ENFANTS NATURELS SIMPLES PAR LE MARIAGE SUBSEQUENT. Rev. Dr. Jan Piekoszewski. J. Peyronnet & Cie, Editeurs, Paris, 1951. Pp. 104.

This is an interesting study of the legitimation of children through the subsequent marriage of parents. It is mainly an historical study with a comparatively brief discussion on the present Canon Law of such legitimation together with a survey of pertinent civil legislation.

The treatise carries through the Roman Law on legitimation and through the various periods of Canon Law. Important texts are examined.

The general division is three-fold: ancient law, Canon Law and contemporary civil law. This division covers the whole pertinent field of law. Of interest to the canonist is the part devoted to the development of the law of the Church through the centuries relative to the legitimation of children by the subsequent marriage of parents. Consideration is given first to the general notions of legitimation. After this, conditions and effects of legitimation are discussed. All this is done in an orderly fashion.

In regard to the actual law of the Church on legitimation, several suggestions are made in the text and in the footnotes on better ways to record such legitimation.

It is, of course, useful to have some data on the conditions required for and the effects of legitimation in modern civil law. The author of this treatise supplies such data. But it is too brief for a satisfactory view of pertinent civil legislation. Nevertheless, footnotes indicate where the texts of the laws of many countries can

be found. Ample use is made here of Bergman's work in German on the law of marriage and the welfare of children.

There is unfortunately no index. Most of the better known commentators in Canon Law are mentioned in the bibliography. With one exception, however, no book or article written in English is mentioned either in the bibliography or in the list of periodicals. This exception is a dictionary of law by R. Burn and listed as published in London, 1782.

SYNODUS DIOECESANA FARGENSIS SECUNDA Convocante et Praeside e mandato speciali Leone Ferdinando Dworschak, D.D. Ex Typographia Bruce, Milwauchiae, 1951. Pp. xviii-332.

This collection of synodal statutes has come to the desk of the reviewer through the kindness of His Excellency, Bishop Dworschak. Such consideration is an opportunity to appraise these statutes.

For the most part little adverse criticism can be made. The second synod of Fargo remains within the proper sphere of a dioecesan synod. It is no part of such an assembly to repeat the general law of the Code or to repeat the conciliar legislation of the Councils of Baltimore. While repetition of this kind is not entirely avoided it is compressed within a reasonable limit. The Latin language is used in the statutes. Available sources of the statutes are indicated in the margin.

There are some points which should be mentioned as good examples of synodal legislation. For instance, confessors of religious are urged to make serious study of ascetical and mystical theology. Again, children attending private academies should make their first Communion in their parish churches and not in the oratory of the academy. Further, an annual Mass is decreed in each parish for the deceased of the parish. Another statute says that Masses should start on time. This is a recommendation enthusiastically endorsed. Finally, priests contracting for work should insist that laborers have a day of rest on days of precept. It must surprise some to see work performed on parochial buildings, etc. on days when the law says no manual work is to be done.

There are some inaccuracies on the statutes which should be indicated. In general, it is incorrect to use the terms *ius*, *ius commune* and *ius canonicum* in precisely the same way. Again, the

distinction in the first statute between the secular clergy and the regular clergy is no longer adequate. Again, the phrase *ad mentem* is not the same as *ad normam*. Again, the term *concessione* is not convertible with the term *consensu*. To the above may be added an observation on the liturgical directions printed after the text of the statutes. These directions contain some inaccuracies in regard to the cross of the altar, the number of candles required and the credence table.

Despite these remarks, the second synod of Fargo deserves to be considered among the better synods of recent years both in the United States and elsewhere.

A PRACTICAL COMMENTARY ON THE CODE OF CANON LAW. Rev. Stanislaus Woywod, O.F.M., LL.B., revised by Rev. Callistus Smith, O.F.M., J.C.L. First Printing of Combined Volumes I & II, March, 1952. Joseph F. Wagner, Inc., New York, N. Y. Pp. xvii-833-905.

This new one volume printing of Fr. Woywod's commentary is little different from earlier editions of two volumes. One or two of the late decisions and decrees of the Holy See are not incorporated in the text but everything new up to the time of printing is included, specifically, the more serious penalty for the secular clergy and religious who engage in business.

Apparently, convenience of one rather than two volumes is the only reason for this new printing. Fr. Woywod's commentary remains the useful and reliable work it has been for years.

EDWARD ROELKER

THE CATHOLIC UNIVERSITY OF AMERICA

Chronicle

GENERAL

Pope Pius XII has named two Cardinals to serve as Papal Legates at the celebrations in India in December commemorating the fourth centenary of the death of St. Francis Xavier. His Eminence, Jaime Cardinal Cerejeira, Patriarch of Lisbon, will be Papal Legate to the ceremonies at Goa and His Eminence, Norman Cardinal Gilroy, Archbishop of Sydney, will be Papal Legate to the observances at Ernakulam in Malabar.

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Kansas City, Kansas, has been established as an Archdiocese. The suffragan Sees are Salina, Wichita, and Dodge City.

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On October 3 in the Chapel of Carmel at Lisieux Masses were continuously celebrated from midnight to midnight in commemoration of the twenty-fifth anniversary of the proclamation of St. Thérèse of Lisieux as the Patroness of the Missions. The intentions for which the Masses were offered were: the intentions of the Holy Father, the sanctification of the members of the Missionary Union of the Clergy and of all priests, an increase in missionary vocations, and the obtaining of strength and light for persecuted missionaries. The Sacred Congregation for the Propagation of the Faith asked all priests to offer their Masses for these intentions on that day. Pope Pius XII gave his Apostolic Blessing to all who organized or took part in the ceremonies and he designated Archbishop Leone Nigris, former Apostolic Delegate to Albania, to offer Mass at Lisieux at the same time that he offered Mass in Rome.

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On September 8, Most Rev. Emmet M. Walsh, D.D., Coadjutor Bishop of Youngstown, offered Mass in St. Peter's Basilica, Rome, to mark the silver jubilee of his consecration.

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Most Rev. Floyd L. Begin, D.D., Auxiliary Bishop of Cleveland, observed the silver jubilee of his ordination with a Solemn Pontifical Mass in St. Agnes' Church, Cleveland.

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August 18-21 the 70th annual Convention of the Supreme Council of the Knights of Columbus was held in Los Angeles. His Eminence, Francis Cardinal Spellman, was the principal speaker at the Convention. He presided at the Solemn Pontifical Mass offered by Most Rev. Charles F. Buddy, D.D., Bishop of San Diego, at which the sermon was delivered by Most Rev. J. Francis A. McIntyre, D.D., Archbishop of Los Angeles.

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August 19-22 the 19th triennial Convention of the International Federation of Catholic Alumnae was held in New York. His Eminence, Francis Cardinal Spellman, presided at a Solemn Pontifical Mass offered in St. Patrick's Cathedral by Most Rev. Joseph F. Flannelly, D.D., Auxiliary of New York, at which the sermon was delivered by Most Rev. Thomas J. McDonnell, D.D., Auxiliary of Wheeling.

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August 12-14 the 34th International Convention of the Catholic Order of Foresters was held in Chicago. His Eminence, Samuel Cardinal Stritch, officiated and preached at the Solemn Pontifical Mass preceding the opening of the Convention.

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September 20-24 the National Council of Catholic Women held its annual Convention in Seattle, Washington.

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August 16-20, the Catholic Central Verein and the National Catholic Women's Union held their annual Conventions in St. Louis.

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September 10-12 the annual meetings of the National Conference of Catholic Charities and of the Society of St. Vincent de Paul were held in Cleveland.

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September 10-12 the 7th annual meeting of the Apostleship of the Sea was held in Cleveland.

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August 26-28 the 15th general meeting of the Catholic Biblical Association was held at St. Procopius' Abbey, Lisle, Illinois.

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August 21-24 the 15th national Convention of the Catholic Students' Mission Crusade was held at the University of Notre Dame.

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August 31 the 6th annual meeting of the American Catholic Psychological Association was held at The Catholic University of America in connection with the Convention of the American Psychological Association.

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September 4-7 the national Convention of the Newman Club Federation was held at Purdue University.

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July 6-10 the annual Convention of the Knights of St. John and of their Ladies' Auxiliary was held in Indianapolis. Most Rev. Paul Schulte, D.D., Archbishop of Indianapolis, offered Solemn Pontifical Mass on the first day of the Convention.

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The 13th annual Liturgical Conference was held in Cleveland.

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October 19-26 marked the second annual observance of Catholic Youth Week.

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October 25-31 the First Inter-American Congress of Catholic Parents will meet in Lima, Peru.

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September 8-12 a meeting of the International Union of Family Organizations was held at Oxford.

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September 9, 10, the Eastern Cana Institute was held at Seton Hall University.

DIGNITIES

August 5 Most Rev. Robert J. Dwyer, D.D., was consecrated second Bishop of Reno by Most Rev. John J. Mitty, D.D., Archbishop of San Francisco. The co-consecrators were: Most Rev. Thomas K. Gorman, D.D., Coadjutor Bishop of Dallas, and Most Rev. Joseph L. Federal, D.D., Auxiliary of Salt Lake City. The sermon was delivered by Most Rev. Duane G. Hunt, D.D., Bishop of Salt Lake City.

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September 24 in St. Joseph's Cathedral, Buffalo, the Most Reverend Apostolic Delegate consecrated Most Rev. Leo R. Smith, D.D., Titular Bishop of Marida and Auxiliary of Buffalo, and Most Rev. James J. Navagh, D.D., Titular Bishop of Ombi and Auxiliary of Raleigh. The co-consecrators were: Most Rev. Raymond A. Kearney, D.D., Auxiliary of Brooklyn, and Most Rev. James H. Griffiths, D.D., Auxiliary of the Military Ordinariate.

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Most Rev. Joseph H. Hodges, D.D., has been named Titular Bishop of Rusadus and Auxiliary of Richmond. He was consecrated October 15 by Most Rev. Peter L. Ireton, D.D., Bishop of Richmond. The co-consecrators were Most Rev. Vincent S. Waters, D.D., Bishop of Raleigh, and Most Rev. John F. Dearden, D.D., Bishop of Pittsburgh. The sermon was preached by Most Rev. John J. Wright, D.D., Bishop of Worcester.

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September 12 His Eminence, James Cardinal McGuigan, Archbishop of Toronto, consecrated Most Rev. Paul Bernier, D.D., the Papal Nuncio to Costa Rica and Panama. The co-consecrators were: Most Rev. Maurice Roy, D.D., Archbishop of Quebec, and Most Rev. Alexandre Vachon, D.D., Archbishop of Ottawa.

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Very Rev. Paul A. Gieringer has been named Rector of the Pontifical Institute Josephinum.

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Very Rev. Jeremiah T. Purtill, S.S.E., has been re-elected Superior General of the Society of St. Edmund.

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Very Rev. Timothy Connolly was elected Superior General of the Society at a General Chapter held in St. Columban's, Navan, Ireland.

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Very Rev. Edward L. Hughes, O.P., S.T.Lr., has been re-elected Provincial of the Dominican Province of St. Albert the Great.

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Very Rev. Charles J. Tallarico, O.F.M., has been re-elected Minister Provincial of the Franciscan Friars of the Immaculate Conception Province.

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Very Rev. David Temple, O.F.M., has been named Provincial of the Franciscan Order on the Pacific Coast.

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Very Rev. Lawrence Mack, S.V.D., has been named Provincial of the Western Province of the United States.

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Very Rev. Henry J. Moquin, A.A., has been named Provincial of the American Province of the Augustinian Fathers of the Assumption.

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Very Rev. James W. Connerton, C.S.C., has been named the first Provincial of the new Eastern Province of the Congregation of the Holy Cross.

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Very Rev. Peter McPartland has been appointed Director of the Columban Fathers in the United States.

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Very Rev. Francis J. Westhoff, M.S.C., S.T.D., has been named Provincial of the Missionaries of the Sacred Heart.

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Very Rev. Peter Harrington, S.M.A., has been re-elected Provincial of the Society of African Missions.

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Rt. Rev. Augustine F. Hickey, of the Archdiocese of Boston, has been named a Protonotary Apostolic.

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The following have been named Domestic Prelates: Rt. Rev. Msgrs. Joseph M. Fitzgibbons, Francis X. Larivere, Donald A. McGowan, Thomas F.

McNamara, Francis L. Shea, and Ladislaus A. Sikora, of the Archdiocese of Boston; Norbert C. Barrett, Duane A. Brady, William B. Collins, P. E. Donnelly, William D. Green, John M. Gregor, John J. Hennessy, Anthony Kreimer, and Albert S. Peikert, of the Archdiocese of Dubuque; Paul E. Campbell, Coleman F. Carroll, Emilio Farri, Edwin P. Fussenegger, Jerome D. Hannan, and Vincent M. Leonard, of the Diocese of Pittsburgh.

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The following have been named Papal Chamberlains: Very Rev. Msgrs. George M. Doud, of the Archdiocese of Boston; Ernest M. Ament, James V. Casey, Leroy J. Enzler, Arthur A. Halbach, and Frederic G. Heles, of the Archdiocese of Dubuque; Bartholomew B. Doyle, Joseph F. Doherty, Francis J. Garvey, John J. Henry, Alfred W. Jess, and Francis J. McCallion, of the Diocese of Camden; Joseph G. Findlan and Thomas J. Quigley, of the Diocese of Pittsburgh.

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Lt. Col. Harry Spitz, former chief of the United States Army dispensary in Tokyo, has been named a Knight of St. Gregory the Great.

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Franklin Dunham, former director of the National Catholic Community Service, and chief of radio-television at the United States Office of Education, has been named a Knight of the Holy Sepulchre.

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His Eminence, Samuel Cardinal Stritch, conferred the medal *Pro Ecclesia et Pontifice* on Leonard Simutis, editor of *Draugas* since 1927, and on Ignatius Sakalas, assistant editor of the same paper since 1939.

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The Lateran Cross has been conferred on Samuel Regalbutto, Andrew N. Farnese, and Vincent Micari, all of Philadelphia.

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The annual Newman Award was bestowed on September 7 on Marvin E. Coyle.

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